



# Federal Register

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**Monday,  
June 21, 2004**

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**Part III**

## **Department of Agriculture**

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**Commodity Credit Corporation  
National Resources Conservation Service**

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**7 CFR Part 1469  
Conservation Security Program; Interim  
Final Rule and Notice**

**DEPARTMENT OF AGRICULTURE****Commodity Credit Corporation****Natural Resources Conservation Service****7 CFR Part 1469**

RIN 0578-AA36

**Conservation Security Program**

**AGENCY:** Natural Resources Conservation Service and Commodity Credit Corporation, USDA.

**ACTION:** Interim final rule with request for comments.

**SUMMARY:** This document establishes regulations to govern activities under the Conservation Security Program (CSP) which is administered by the Natural Resources Conservation Service (NRCS). The CSP sets forth a mechanism to provide financial and technical assistance to agricultural producers who, in accordance with certain requirements, conserve and improve the quality of soil, water, air, energy, plant and animal life, and support other conservation activities. The CSP regulations implement provisions of the Food Security Act of 1985, as amended by the Farm Security and Rural Investment Act of 2002, and are intended to assist agricultural producers in taking actions that will provide long-term beneficial effects to our nation.

**DATES:** Effective June 21, 2004. Comments must be received by September 20, 2004.

**ADDRESSES:** Send comments by mail to Financial Assistance Programs Division, Natural Resources Conservation Service, P.O. Box 2890, or by e-mail to [FarmBillRules@usda.gov](mailto:FarmBillRules@usda.gov); Attn: Conservation Security Program. You may access this interim final rule via the Internet through the NRCS homepage at <http://www.nrcs.usda.gov>. Select "Farm Bill. The rule may also be reviewed and comments submitted via the Federal Government's centralized rulemaking Web site at <http://www.regulations.gov>."

**FOR FURTHER INFORMATION CONTACT:** Craig Derickson, Conservation Security Program Manager, Financial Assistance Programs Division, NRCS, P.O. Box 2890, Washington, DC 20013-2890, telephone: (202) 720-1845; fax: (202) 720-4265. Submit e-mail to: [craig.derickson@usda.gov](mailto:craig.derickson@usda.gov), Attention: Conservation Security Program.

**SUPPLEMENTARY INFORMATION:** Based on an advance notice of proposed rulemaking which was published in the **Federal Register** on February 18, 2003

(68 FR 7720), information submitted in public workshops and focus groups, a proposed rule published in the **Federal Register** on January 2, 2004 (69 FR 194), setting forth the agency's vision of how to implement the CSP, and a number of public listening sessions, this document establishes regulations to govern activities under the CSP.

The CSP is a voluntary program administered by NRCS, using the authorities and funds of the Commodity Credit Corporation, that provides financial and technical assistance to producers who advance the conservation and improvement of soil, water, air, energy, plant and animal life, and other conservation purposes on Tribal and private working lands. Such lands include cropland, grassland, prairie land, improved pasture, and rangeland, as well as forested land and other non-cropped areas that are an incidental part of an agricultural operation.

The CSP regulations implement provisions set out in Title XII, Chapter 2, Subchapter A, of the Food Security Act of 1985, 16 U.S.C. 3801 *et seq.*, as amended by the Farm Security and Rural Investment Act of 2002, enacted on May 13, 2002, Public Law 107-171 and are intended to assist agricultural producers in taking actions that will provide long-term beneficial effects to our nation.

NRCS responded in the notice of proposed rulemaking to the comments submitted in response to the advance notice of proposed rulemaking and to the information submitted in public workshops and focus groups. For the proposed rule, we provided a 60 day comment period that ended March 2, 2004. We received more than 10,000 separate written responses containing over 20,000 specific comments were received: 9,638 comments were from farmers, ranchers, and other individuals, 253 from non-governmental organizations, 27 from businesses, and 128 from state, local, and tribal governments. Over 700 oral comments were received from the 10 Nationally-sponsored CSP listening sessions. Several other listening sessions were held and those comments were considered in the written responses. We discuss below the significant issues raised in response to the proposed rule, including the written responses and the oral submissions at the public listening sessions. Based on the rationale set forth in the proposed rule and this rule, we are adopting the provisions of the proposed rule as a interim final rule, except for certain changes as discussed below.

Additional responses were received from Federal agencies and employees; their comments are not included in the following analysis of public comments. These responses were treated as inter- and intra-agency comments and considered along with the public comments, where appropriate. There were also comments related to the statute, the budget, and other areas of concern outside the purview of this rulemaking that are not discussed here.

**Discussion of the Conservation Security Program Interim Final Rule****Overview**

CSP helps support those farmers and ranchers who reach the pinnacle of good land stewardship, and encourage others to enhance the ongoing production of clean water and clean air on their farms and ranches—which are valuable commodities to all Americans.

The interim final rule promulgates the proposed rule published January 2, 2004, as interim final with several significant additions and changes. As discussed in a notice published on May 4, 2004 (69 FR 24560), NRCS determined that the interim final rule would contain two key eligibility provisions of the proposed rule: the watershed approach and enrollment categories. Prompt use of these elements provides a practical means of implementing the program in FY 2004 and staying within the statutory funding and technical assistance constraints. Without moving expeditiously to establish the processes for identifying and utilizing priority watersheds and enrollment categories, the CSP would not be implemented in the current fiscal year. Notwithstanding the adoption of these elements for FY 2004, this interim final rule provides notice and opportunity for comment on the processes for establishment of priority watersheds and the enrollment categories for use in administering the CSP for FY 2005 and future years.

Congress authorized \$41.443 million to be available to implement CSP in FY 2004. NRCS needs to obligate these funds by September 30, 2004. Given the time-frame established by the authorization of funds, NRCS must have its framework for implementation of CSP available immediately. While NRCS has considered the comments in response to the proposed rule and will respond to further comments on its interim final rule, NRCS believes that the public interest will best be served if CSP can be implemented this fiscal year under the basic framework set forth in its proposed rule.

This interim final rule sets forth the manner in which NRCS will operate the CSP. As noted in one public response, "The proposed rule was designed to manage budget exposure and participation under the constraints of a severely capped entitlement program and enable eventual implementation of the fully functioning stewardship-based entitlement program." This interim final rule reflects the authority of the Secretary to set criteria, standards, and priorities for annual sign-ups in order to match participation with available technical and financial resources, and achieve an orderly and effective ramp up to full implementation of CSP. Environmental performance, priorities for CSP and programmatic costs will be effectively managed through criteria established for general sign-ups in priority watersheds. Ramping up CSP as quickly as possible while preserving its integrity as a novel approach of integrating environmental performance while rewarding stewards were the primary considerations that guided rulemaking.

In developing this interim final rule, NRCS carefully considered its experience with conservation programs and the public comments it received. CSP raises policy issues that are not usually addressed in other conservation programs. This interim final rule lays out the approach NRCS believes will best achieve the statutory objectives and responds to the suggestions from the public. Several policy decisions established in the rule are highlighted in this preamble for further public comment, but NRCS is seeking comment on all aspects of this rule.

#### General Comments on 7 CFR Part 1469

Overall, almost all respondents expressed appreciation for the opportunity to comment on the CSP proposed rule and general support for CSP. Many offered valuable suggestions for improving or clarifying specific sections of the proposed rule, as well as specifics related to managing the program which have been incorporated into the CSP manual and operating handbooks. Some of these suggestions were group efforts, in that numerous individual responses used similar or identical language to identify and describe their interests, concerns, and recommended modifications to the proposed rule. There were thousands of responses that commented on the underlying statutory authority itself and other matters outside the control of NRCS and, thus, the scope of the rule, *e.g.*, some expressed concern about the budget.

The majority of comments centered on six major issues in the proposed rule: (1) The Administration's response to legislative intent; (2) the watershed approach and enrollment categories; (3) the minimum stewardship eligibility requirements; (4) the funding and payment rates; (5) the definition of agricultural operation; and (6) locally led conservation. These comments were considered as part of the rulemaking record to the extent that they were relevant to the objectives of the rulemaking. Numerous minor editorial and other language clarification changes were suggested; these comments are not included in the following analysis but all were considered and many of the minor technical changes are included in the interim final rule. Comments on other issues are discussed in the Summary of Provisions. As appropriate, public comments and recommendations have been incorporated in the interim final rule or will be included in program guidance and delivery activities.

#### 1. The Administration's Response to Legislative Intent

##### Limiting Payments

As discussed in the proposed rule, the CSP, as originally enacted, was an entitlement program where many producers would have received payments if they met certain eligibility criteria. The Administration designed this new conservation entitlement program with a cap on its total expenditures over multiple years because, subsequent to the enactment of the CSP, the Consolidated Appropriations Resolution of 2003 amended the Act to limit CSP's total expenditures to a total of \$3.77 billion over eleven years, fiscal year (FY) 2003 through FY 2013. In the proposed rule, NRCS outlined the mechanisms to address a capped entitlement program and still deliver an effective CSP program. The Omnibus Appropriations Act for FY 2004, signed January 23, 2004, removed the \$3.77 billion funding limitation for the program over eleven years, but also instituted a cap for FY 2004 of \$41.443 million, keeping CSP as a capped entitlement program for that year. The President's budget, released February 2, 2004, in effect focused CSP's activities and benefits in high-priority regions that meet the environmental and philosophical goals of the program.

The CSP statutory provisions were written without a specific mechanism for limiting payments if the program were only partially funded. With a cap of \$41.443 million for FY 2004, this interim final rule adopts provisions of

the proposed rule setting forth a mechanism for limiting payments for those years when the CSP is only partially funded. In this regard, the interim final rule includes provisions to:

- Limit the sign-up periods.
- Limit participation to priority watersheds.
- Limit participation to certain enrollment categories.
- Reduce stewardship (base) payments by applying a reduction factor.

Limit the number and type of existing and new practice payments. Many commenters asserted that the proposed rule did not meet the intent of Congress or the law. They suggested that CSP should not adopt any provisions that would establish a mechanism for responding to partial funding because the CSP should have full funding. In light of the congressional cap on spending in FY 2004 and the President's 2005 Budget request, NRCS established a priority mechanism in order to most effectively administer the CSP. This interim final rule allows the flexibility to conduct any CSP sign-up in an appropriate number of watersheds and enrollment categories according to the program's funding status at the time of sign-up. Since the CSP statutory funding was adjusted three times in twenty months, there is a need to allow for regulatory flexibility to operate the program. The alternative would be to change the rule each time Congress makes an adjustment to CSP funding. Further, NRCS believes that each of the limiting factors will help create the appropriate balance between allowing the largest number of participants and yet providing meaningful payments.

The limitation in the interim final rule concerning stewardship (base) payments is different from that set forth in the proposed rule. The proposed rule provided that we would reduce base payments, now termed "stewardship payments", for all three tiers by applying a 0.1 reduction factor. In the interim final rule, the stewardship rate for Tier I is reduced to 0.25, the stewardship rate for Tier II is reduced to 0.50, and the stewardship rate for Tier III is reduced to 0.75. We chose these percentages for two reasons. First, this will provide incentives for producers to move to a higher Tier which provides significantly greater environmental benefits. Second, the conservation treatment necessary to advance from Tier II to Tier III would otherwise be disproportionate with the payment scheme.

Commenters asserted that rather than prorate funding, a better approach may be to hold the remaining funds for a

future sign-up. Other commenters asserted that this year's limited funding should be used to develop implementation strategy and capability instead of launching a scaled down program. We made no changes based on these comments. Congress intended that NRCS expend or obligate the funds in FY 2004 for establishing CSP contracts with participants. NRCS has no authority to carry CSP funds into the next fiscal year and funds not expended or obligated will be returned to the Treasury.

Commenters asserted that NRCS should extend contracts to the maximum amount of participation for each sign-up by allocating limited funding, if necessary, based on the annual contract amount rather than the life of contract amount. We made no changes based on these comments. CSP funding already operates in the manner suggested by the comment.

Commenters asserted that producers should be accepted into the CSP without having accepted a conservation security plan, but funding should be withheld until a security conservation plan is accepted. We made no changes based on these comments. We would be unable to make determinations regarding the adequacy of the applicant's conservation performance and therefore eligibility for enrollment into the CSP without the submission of a conservation security plan.

Commenters asserted that in times of less than full funding NRCS should give priority to Tier III over Tier II and give priority to Tier II over Tier I. We made no changes based on these comments. The statute provides no authority for prioritizing one Tier over another and requires that the program offer all three Tiers for participation.

## 2. The Watershed Approach and Enrollment Categories

### The Watershed Approach

In the proposed rule, NRCS stated that it would use watersheds as a mechanism for focusing CSP participation. NRCS would nationally rank watersheds to focus on conservation and environmental quality concerns based on a score derived from a composite index of existing natural resource, environmental quality, and agricultural activity data. Watersheds ranked for potential CSP enrollment would then be announced in the sign-up notice. Once the highest ranked watershed's applications were funded, the next watershed would be funded, *etc.* Funding would be distributed to each priority watershed to fund sub-categories until it was exhausted.

In order to be able to implement CSP in FY 2004, NRCS announced, in a notice to the **Federal Register**, dated May 4, 2004 (69 FR 24560), its decision to use priority watersheds and enrollment categories for operating the program for the current fiscal year. The authority for the use of priority watersheds and enrollment categories is the authority to determine the conservation purposes for which assistance for conservation and improvement are to be provided under CSP—16 U.S.C. 3838A(a).

The May 4 document and a copy of the enrollment category chart can be found on the Web at <http://www.nrcs.usda.gov/programs/csp>.

The interim final rule includes a process to select the priority watersheds and includes specific enrollment categories for identifying, classifying, and prioritizing contracts to be funded. As discussed below, NRCS will use similar provisions regarding watersheds and enrollment categories for FY 2004. NRCS will not rank selected watersheds for funding purposes, but rather provide funding to producers in all selected watersheds in the order established through the enrollment categories. However, NRCS is requesting comments on the process to select the priority watersheds and on the specific enrollment categories for identifying, classifying, and prioritizing contracts to be funded. NRCS will consider the comments and may make appropriate changes for future years.

In the proposed rule, NRCS also asked for ideas for program delivery as alternatives to its "preferred approach and the listed alternatives." These comments are also addressed below.

Commenters asserted that priority should be given to those with the highest number of enhancement activities. We made no changes based on these comments. This would be inconsistent with the statutory scheme regarding the ranking of applications.

Commenters asserted that the CSP process constitutes competitive bidding. We made no changes based on these comments. We are not implementing a competitive process. We are merely implementing the statutory scheme of providing payments for those meeting specified criteria, so as to stay within the budgetary and technical assistance limits explained below.

NRCS will prioritize watersheds based on a nationally consistent process using existing natural resource, environmental quality, and agriculture activity data along with other information that may be necessary to efficiently operate the program. The watershed prioritization and

identification process will consider several factors, including but not limited to: The potential of surface and ground water quality to degradation; the potential of soil to degradation; the potential of grazing land to degradation; state or national conservation and environmental issues *i.e.*, location of air non-attainment zones or important wildlife habitat; and local availability of management tools needed to more efficiently operate the program. The number and location of eligible watersheds will be announced and identified prior to the sign-up.

Commenters made a number of suggestions regarding the establishment of priority watersheds, including the following:

- Use objective criteria to prioritize watersheds.
- Give priority to watersheds in good condition.
- Give priority to watersheds in bad condition (such as watersheds with the most sediment and/or water quality concerns or watersheds with water quality impairments resulting from agricultural activities).
- Give priority to areas where producers are prepared to participate in significant numbers.
- Give priority to areas that provide the drinking water supply.
- Ensure that environmental performance, evaluation and accountability be established in advance, be consistent with land use, and be consistent with other agencies' initiatives.

Based on the projection from the President's budget, the selection of the watershed priorities would put all watersheds on a multi-year rotation for CSP sign-up. Only producers with a majority of their agricultural operation located within those watersheds would be eligible for a given sign-up.

Commenters asserted that the watershed priority system should be deleted and instead NRCS should fund only those agricultural operations that already meet the highest conservation standards, such as those eligible for Tier III payments. Other commenters asserted that the watershed priority system should be deleted, and instead, NRCS should fund only those who do not yet meet high standards but strive to do so. Commenters further asserted that instead of the priority watershed approach, NRCS should select one farm from every watershed, select one farm from each county, select farms based on a lottery system, select farms based on a first-come first-serve approach, and select all farms in non priority watersheds. We made no changes based on these comments. By statute, the cost

of technical assistance is limited to 15 percent of the total funds expended in a fiscal year. It is not feasible to conduct a nationwide sign-up for any purpose because the technical assistance cost would far exceed the 15 percent cap.

NRCS responded by determining that even though the comments were overwhelmingly negative regarding the watersheds and enrollment categories, it had no choice but to implement the program in this manner. Two key considerations provide the basis of a watershed focus to the CSP program. The first is to ensure that CSP's limited resources are focused first on the most achievable environmental performance areas. The second is management constraints based on the statutory limit on technical assistance. By law, NRCS cannot incur technical assistance costs for NRCS employees or approved technical assistance providers in excess of 15 percent of the funds expended in a fiscal year. NRCS expects that a large number of producers will seek participation in CSP and ask for assistance to determine their potential eligibility for the program. Thus, the statutory cap on technical assistance of 15 percent becomes a primary limiting factor for implementing CSP.

Given capped spending authority in FY 2004, and as proposed in the President's 2005 Budget, the Administration wants to focus CSP's activities and benefits in high-priority regions that meet the environmental and philosophical goals of the program. Using watersheds allows for improved watershed-scale planning, program execution, and monitoring and evaluation of results, creating a first-of-its-kind conservation program.

Watersheds form discrete natural spatial units. Using watersheds to narrow program participation and assistance will enhance the evaluation of producers' stewardship efforts. Watersheds will reflect the environmental progress we expect from CSP in ways we couldn't expect from working along county or state lines. NRCS expects that the selection of different watersheds for each sign-up will result in every farmer and rancher being potentially eligible for CSP over the rotation. No qualifying producer will be left out. A watershed rotation reduces the administrative burden on applicants while it reduces the technical assistance costs associated with NRCS and its technical service providers processing a large number of applications that cannot be funded.

Rotating the watersheds allows producers to plan and prepare for CSP participation in future sign-ups. The watershed approach allows NRCS to

focus finite resources on areas with both a documented need for resource enhancement and a strong stewardship tradition. For producers in a selected watershed, this approach means better service when applying, and a higher chance of getting selected. For producers not yet in a selected watershed it means time to improve conservation performance through access to other Farm Bill programs and access to technical service from agency personnel unencumbered by CSP responsibilities. The CSP self-assessment exercise will allow producers to assess their conservation performance for the CSP sign-up and allow for management concerns to be addressed.

The staged implementation will allow Agency personnel to refine, streamline, and perfect application procedures as well as self-assessment and self-screening processes.

We believe that this is the best alternative to meet goals that we believe that must be met for FY 2004, *i.e.*, help ensure that we select watersheds with a demonstrated effort to apply conservation measures, with identifiable needs, and with circumstances that allow NRCS the opportunity to successfully implement the CSP in the remaining time in FY 2004.

By concentrating participation for each sign-up for CSP in specific watersheds and addressing priority resource concerns, NRCS will be better able to provide high quality technical assistance, adapt new technology tools, and assessment techniques to critically evaluate the program. Additionally, NRCS will have the opportunity to evaluate the effectiveness of the treatment in an established geographic context where it will be more practical and reasonable to relate to environmental performance.

Commenters asserted that the watershed priority system should be deleted and instead NRCS should fund only those agricultural operations that already meet the highest conservation standards, such as those eligible for Tier III payments. Other commenters asserted that the watershed priority system should be deleted, and instead, NRCS should fund only those who do not yet meet high standards but strive to do so. Commenters also suggested that instead of the priority watershed approach, NRCS should select one farm from every watershed, select one farm from each county, select farms based on a lottery system, select farms based on a first-come first-serve approach, and select all farms in non priority watersheds. We made no changes based on these comments. By statute, the cost

of technical assistance is limited to 15 percent of the total funds expended in a fiscal year. It is not feasible to conduct a nationwide sign-up for any purpose because the technical assistance cost would far exceed the 15 percent cap.

Some commenters asserted that instead of priority watersheds, the CSP program should be treated as a pilot or demonstration project until full funding occurs. We made no changes based on these comments. In essence, NRCS included this approach in its watershed process as part of the management flexibility aspect. Based on these comments, we propose to allow flexibility in the watershed selection process to capitalize on knowledge gained through the first year implementation.

Commenters argued that watershed priorities will help industrial sized agriculture instead of small to moderately sized family farms. We made no changes based on these comments. The criteria for selecting priority watersheds do not take into account the size of the farms. USDA natural resource, agricultural statistics, and economic research data do not indicate any relationship between resource conservation and agricultural operation size.

Some commenters asserted that if eligibility is to be determined based on ranking of watersheds, the watersheds should be selected by rotation. The watershed approach includes a rotation system aspect in that all watersheds will be selected once before any are selected for a second time.

Some commenters asserted that if eligibility is to be determined based on ranking of watersheds, the watersheds should be selected by 10, 11, or 12 digit hydrologic unit codes rather than 8-digit hydrologic unit codes. They asserted that 8-digit hydrologic unit codes are too large for effective watershed planning, especially in small States like Delaware or Hawaii. We made no changes based on these comments. We selected the use of 8 hydrologic unit codes because they are manageable natural resource delineations and the majority of natural resource data needed for the analysis is available at the 8 digit level. Watersheds are the fundamental building blocks of natural resource systems; their boundaries are inherently inclusive of most natural processes and communities. The 8-digit watershed (sub-basin) is the smallest, nationally consistent delineation available for use in identifying priority watersheds and for which accepted statistical analytical procedures and underlying supporting data exist that make it possible to use essential county level agricultural data

such as farm numbers, agricultural input use, and conservation activity. NRCS along with other Federal and State level agencies with natural resource and land management responsibilities are working to delineate smaller size hydrologic units (*i.e.*, 10 and 12 digit hydrologic unit codes) using common standards and guidelines to create a hydrologically correct, seamless and consistent national watershed boundary dataset (WBD). At this time, only 14 states have completed and verified delineation under the accepted standards and guidelines for the WBD. Sub-basins (formerly cataloging units) average about 450,000 acres in size, 10 digit range in size from 40,000 to 250,000 acres, and 12 digit from 10,000 to 40,000 acres.

Careful accounting for and tracking of CSP enrolled acres will help to demonstrate the environmental performance achieved through the program. The first order of benefits is provided as stewards maintain enrolled acres to the stringent CSP non-degradation standard, which they met in order to qualify for the program. These acres reflect a stream of environmental benefits sustained, and the first increment of environmental benefit. Acres enhanced beyond non-degradation, through management intensity that amplifies conservation benefits, provides a second increment of environmental performance. Quantifying the natural resource and environmental improvements delivered will be achieved at micro and macro scales over time. At the field level, environmental performance will be observed and documented through the producer-based studies and evaluation and assessment components of CSP. At larger scales, natural resource inventory, ongoing conservation system physical effects documentation, and modeling methods will form the basis for quantifying CSP environmental performance.

Some commenters asserted that we should use maps concerning plants, crops, livestock, or wildlife, including habitat needs of important fish and wildlife species, or to help determine which areas to pick for payment of CSP. We made no changes based on these comments. CSP is targeted toward working agricultural lands throughout the Nation. Although valuable sources of information, data on crops, plants, wildlife, and livestock tend to be too localized to be used as national selection criteria.

Some commenters asserted that we should remove the watershed concept, if all watersheds could be funded. We made no changes based on these

comments. The more funding we have the more watersheds would be included in CSP, including all, if appropriate.

Commenters asserted that the watershed approach should concentrate on ranching areas. We made no changes based on these comments. By statute, a number of different land uses are eligible for CSP and there is no basis for emphasizing rangeland.

#### Enrollment Categories

NRCS proposed to establish and operate a system of conservation enrollment categories to enable the Secretary to conduct the CSP in an orderly fashion and remain within the statutory budget caps. The enrollment categories were intended to identify and prioritize eligible producers within the selected watersheds for funding. Applicants would be eligible to be enrolled based on science-based, data supported, priority categories consistent with historic conservation performance established prior to the announcement of a sign-up. NRCS would develop criteria for construction of the enrollment categories, such as soil condition index, soil and water quality conservation practices and systems, and grazing land condition, and publish them for comment in the **Federal Register**. NRCS proposed that the categories would be based on the following principles:

(i) Categories will serve to sustain past environmental gains for nationally significant resource concerns consistent with the producer's historic conservation performance.

(ii) Categories will use natural resource, demographic, and other data sources to support the participation assumptions for each category.

(iii) The highest priority categories will require additional conservation treatment or enhancement activities to achieve the additional program benefits, and

(iv) Categories will accommodate the adoption of new and emerging technologies.

NRCS also allowed that sub-categories might be established within the categories.

The May 4 notice announced NRCS' intention to establish and operate a system of conservation enrollment categories to enable the Secretary to conduct the program in an orderly fashion and remain within the statutory budget caps for FY 2004. Enrollment categories can be reviewed and downloaded at <http://www.nrcs.usda.gov/programs/csp>.

Once the highest enrollment category's applications are funded within all priority watersheds, the next category

would be funded, etc. If all the applications in a category cannot be funded, then NRCS will fund subcategories in the same manner. Subcategories will be announced in each sign-up. Funding will be distributed to each succeeding category to fund subcategories until funding is exhausted.

NRCS is requesting comment on the categories chosen for 2004 and the specific criteria used to sort applications. This input will be considered in developing the FY 2005 sign-up and a final rule.

One comment stated "the multiple levels of the application process will be one of the most confusing aspects of the CSP implementation. The understanding of the enrollment categories and sub-categories will need considerable explanation to applicants. The ranking of categories adds another level of inability to determine if one's application would be accepted. The development of specific examples of practices relative to each State or region will be beneficial. Enrollment categories, if used, should be practical and tailored to meet the specific needs of the State or region of the State. In order to maximize Federal conservation spending, we would urge that beginning farmer and limited risk farmers not be specified as an enrollment category, but rather some other method be determined to designate some funding to these special cases."

Another group responded, "More flexibility should be given to State Conservationists in the funding priorities for the enrollment categories and sub-categories. Rather than strictly funding all projects in full based on some categorization, it may be more feasible to pro-rate funding across several participants with sound plans if such partial funding is enough to provide a significant enhancement incentive. On the other hand, limited funding should not be pro-rated to the extent that it merely offers "pennies on the dollar" and is not commercially-viable."

Another commenter stated, "a second overarching theme of CSP is that it is for all farmers. Unlike commodity programs, it is open to livestock farmers, fruit and vegetable growers, organic producers, and many others. It is open to large and small farms. Unlike other conservation programs, it is not just for those who have ongoing resource degradation, but also rewards those who have done a good conservation job all along on their own. Unfortunately, these rules fall short of achieving the goal of being open to all who agree to meet its conservation challenge."

We have addressed the issues raised by commenters in discussions throughout this document. However, NRCS has proposed a bold set of enrollment categories that in fact do “reward(s) those who have done a good conservation job all along on their own,” first, and the rest if funding is available. NRCS would fund as many categories as possible. If the last category cannot be fully funded, NRCS would fund producers within the category in order of the subcategories as indicated in the sign-up announcement. NRCS will fund as many subcategories within the last category to be funded as possible. If the final subcategory cannot be completely funded, the applications will be pro-rated. Additionally, within each category, limited resource producers would be placed at the highest subcategory for funding. All applicants would be placed at the highest subcategory for which they may qualify.

### 3. Minimum Stewardship Eligibility Requirements

Under proposed rule section § 1469.5, a producer must meet minimum criteria for enrollment in Tier I, II, or III to be eligible for CSP. This included the requirement that producers meet or exceed the quality criteria set forth in the NRCS technical guides for the nationally significant resource concerns. The proposed rule designated soil quality and water quality as the two nationally significant resource concerns. Further, under proposed § 1469.4, for each sign-up, the Chief of NRCS may determine additional nationally significant resource concerns that reflect pressing conservation needs, and emphasize those that deliver the greatest net resource benefits from the program.

Commenters were concerned that the proposed rule had set the entry point too high. One commenter asserted that the proposal would restrict access to only those farmers who have already addressed all their major conservation needs, and deny access to many. Others requested that NRCS retain high environmental standards, but to allow farmers and ranchers to achieve those high standards while in the program. Others congratulated NRCS on making sure that the program did require actual stewardship as a requisite for entry. The conservation standards for soil and water quality must be achieved prior to becoming eligible for the CSP for Tier I and II. For Tier III participants, the proposed rule requires all applicable resource concerns be addressed prior to enrollment.

The law allows the Secretary to set the minimum tier eligibility for CSP.

With the concept of “reward the best and motivate the rest”, the minimums were set to reward those historic stewards who have been providing the most fundamental conservation treatment to protect the soil and manage nutrients and pesticides through the most basic stewardship practices that result in environmental improvements that benefit all Americans, clean water, and healthy landscapes. This reward serves as a motivator to those who have not practiced basic conservation management to complete these minimum requirements for future CSP eligibility. All activities above these minimums are potentially eligible for enhancement payments once the producer enters the program.

Commenters suggested that NRCS should adopt a systems approach that includes an index that scores the growers’ overall agronomic practice concerning residue, soil disturbance, pest, and nutrient management and rotations. We made no changes to the regulatory language based on these comments. However, we have significantly adjusted our process for development of enhancement payments to include these concepts. NRCS will utilize performance based indices for use in enhancement payment calculations for use in the first sign-up, and plans to develop additional performance-based indexes for use wherever practical.

#### Significant Resource Concerns

Commenters asserted that NRCS should establish criteria but that soil and water should not be singled out. The commenters suggested that the following also be included as significant resource concerns:

- Water quantity.
- Air quality.
- Energy.
- Wildlife.
- Fish.
- Plant and animal germ plasma conservation.

• All of the resources concerns identified within the statute, tailored to their operations.

- Biodiversity.

We made no changes based on these comments. Although all resources are important for agricultural operations, NRCS established minimum criteria for eligibility based on soil quality and water quality because they are essential to all agricultural operations and provide the best yardstick for measuring commitment to conservation. These nationally significant resource concerns are eligibility requirements that must be met as a condition for enrollment rather than a theme for improvement. In this

interim final rule we are retaining the provisions to allow NRCS to designate additional nationally significant resource concerns so that NRCS can further limit eligibility in any sign-up by adding these additional eligibility requirements.

Other commenters suggested that the rule clarify the specific CSP requirements of soil quality and water quality on cropland and grazing land. Based on these comments, NRCS has more specifically set the minimum level of treatment for the Tiers. As described in the May 4 notice, for assessing soil quality on cropland, irrigated cropland, vineyards and orchards, NRCS will use the Soil Condition Index (SCI) to provide an overall indication of the trend and quality of the soil resource. Soil quality minimum level of treatment is defined as achieving a positive SCI. To assess the condition of the soil resource, the SCI is an effective tool that readily evaluates the producers farming activities for soil quality and assigns an index value for that operation. The SCI can predict the consequences of cropping systems and tillage practices on the trend of soil organic matter.

Commenters asserted that soil quality is mostly defined as soil organic matter, and this should not be the conservation target. We made no changes based on these comments. Organic matter is a primary indicator of soil quality and an important factor in carbon sequestration and global climate change. NRCS reviewed other options, such as assigning specific practices to be achieved for program entry, requiring all soil quality resource concerns in the NRCS technical documentation to be addressed, and adding soil erosion as an additional factor. The SCI provides an overall indication of the trend and quality of the soil resource, provides local flexibility, takes advantage of new and emerging technology, is easy to use by the public and NRCS work force, and provides a science-based approach to improving the soil resource and positive benefits toward air quality, carbon sequestration, reduction of green house gases, and soil moisture conservation.

[For assessing water quality on cropland, irrigated cropland, vineyards and orchards, NRCS will set the water quality minimum level of treatment as managing specific sub-set of resource concerns: Nutrients, pesticides, salinity, and sediment. This sub-set of resource concerns provides an overall indication of the stewardship effort by the producer for water quality. In effect, this reduces excessively high eligibility requirements, provides for a more streamlined program, allows NRCS to ramp-up the water quality portion of the

CSP, provides local flexibility to adapt assessment of the resource concerns, and reduces potential criticism about unfair or inappropriate resource condition assessments that are difficult to make.

Achievement of soil and water quality criteria on rangelands and pasture is based on the management of plant communities through control of grazing animals. Controlled rotational grazing ensures the appropriate kind and number of animals is balanced with the adequate amount of available forage and meets the need of the plants. Water quality issues on rangelands for the purposes of the CSP means resource concerns and/or opportunities, including concerns such as nutrients, sediment, pesticides, and turbidity in surface waters with limited impacts to groundwater. Soil quality issues on rangelands include erosion, organic matter, and compaction. These issues are adequately addressed through grazing management and managing livestock access to water courses through a properly applied grazing management plan. Adequate vegetation cover provides soil and water quality benefits, such as maintaining filtering capacity, infiltration rates, organic matter content, and is achieved by controlling grazing animals to minimize livestock concentration, and trailing and trampling, and enhancing nutrient distribution.

Commenters asserted that water quality criteria and the soil quality criteria were too high. Some commenters asserted that the CSP rule should list all water and soil quality and resource criteria levels so there is no question about what they are at sign-up. Others argued that the CSP should be changed so that all could be eligible, and that standards should not be required to be met for a period of time, such as three years. In addition, some commenters asserted that the definition of water quality should specifically address water temperature. In order to address these comments NRCS made the minimum requirements for soil quality and water quality more specific. For implementation of CSP, the soil quality minimum requirement is now defined as a SCI value of 0.0 or greater, and the water quality minimum requirement is defined as meeting the quality criteria for nutrients, pesticides, salinity, and sediment for surface waters and nutrients, pesticides, and salinity for groundwater according to the FOTG.

Commenters asserted that reductions in all forms of soil erosion, including tillage erosion, should be included as critical components of any national resource concern related to soil quality.

To address this issue, the interim final rule uses the SCI to provide an overall indication of the trend and quality of the soil resource, including the impact of tillage. NRCS uses the SCI in conservation planning to estimate whether applied conservation practices and systems will result in maintained or increased levels of soil organic matter.

Commenters asserted that the final rule should require consultation with state and fish wildlife agencies and natural resource agencies. We made no changes based on these comments. Although the statute does not require consultation with any other agency, NRCS seeks advice for program delivery from the State Technical Committee which includes membership from State and fish wildlife agencies and natural resource agencies.

Commenters asserted that NRCS should provide producers the flexibility to determine which resource concerns should be applicable for eligibility as nationally significant resource concerns. We made no changes based on these comments. If we were to expand the list of nationally significant resource concerns, the eligibility requirements would be much more stringent and many deserving applicants would be ineligible. However, Tier II participation does allow the producer to select another resource concern to be addressed by the end of the contract. In addition, producers will be able to address a wide array of resources and resource concerns under the enhancement portion of the CSP.

Commenters argued that the selected resource concerns were not appropriate for their region of the country, or to add additional concerns to the list such as rangeland health and at-risk wildlife. Resource concerns and quality criteria for their sustained use rely on the existing NRCS technical guides and conservation planning guidance and policies. Even though not all operations have problems to solve in the area of water quality and soil quality, most have opportunities to improve the condition of the resource through more intensive management of typical soil quality or water quality conservation activities such as conservation tillage, nutrient management, grazing management, and wildlife habitat management. Operations that have already treated soil and water quality to the minimum level of treatment could increase the management intensity applicable to those resource concerns through enhancement activities. This rule requires that every contract address national priority resource concerns. At the announcement of sign-up, the Chief may designate additional resource

concerns of national significance. Additionally, State and local concerns would be addressed through the enhancement activities undertaken by CSP participants.

Commenters asserted that eligibility should not be based on resource concerns but instead on management practices. We made no changes based on these comments. The statute provides the minimum requirement for Tier I and Tier II as addressing at least one resource concern and all resource concerns for Tier III. NRCS has exercised the Secretary's authority to set the minimum requirement by elevating Tier I and Tier II requirements to having addressed both soil quality and water quality. Addressing these resource concerns requires more than just implementing a specified practice or management activity.

NRCS received comments expressing concerns that the proposed rule is silent on how the Department will coordinate participation in the CSP for organic farmers who are certified under USDA's National Organic Program (NOP). NRCS did a comparison between the technical requirements for the NOP and CSP minimum eligibility requirements. The land management plan required by NOP does not necessarily meet the minimum standards for soil quality and water quality. In fact, there is no requirement in NOP to be in compliance with highly erodible land provisions. NRCS is generating a crosswalk between the regulatory NOP practices and NRCS FOTG practices to assure that certified growers get full credit for their NOP compliance. The eventual final rule preamble will include a clear mechanism for coordinating participation in the NOP and the CSP. USDA staff will deliver these complementary programs in the most farmer-friendly, least burdensome fashion possible.

Commenters asserted that NRCS should make CSP participation conditional on attaining the presumably stronger non-degradation standard as required by some laws. We made no changes based on these comments. The term non-degradation standard as used in the CSP statute means the level of measures required to adequately protect, and prevent degradation of natural resources, as determined by the Secretary in accordance with the quality criteria described in handbooks of the NRCS. The term non-degradation is not used in this rule in order to avoid confusion with the regulatory compliance meanings used by EPA and other regulatory agencies. The FOTG relies upon quality criteria, the

functional equivalent to the non-degradation standard.

#### 4. Funding and Payment Rates

Proposed § 1469.23, set up a CSP payment system that included a base component based on land use categories, an existing practice component based on a percentage of the average 2001 county cost of maintaining a land management and structural practice, and an enhancement component based on specific criteria. Proposed § 1469.23 also included one-time new practice payments. Numerous commenters provided advice regarding the types of lands and activities that should be considered for the various components and for new-practice payments. The proposed rule contains mechanisms to help ensure that determinations are made based on the best potential conservation stewardship impact.

##### A. General Concerns

Commenters asserted that NRCS should provide a list of approved conservation practices and intensive management activities which are eligible for CSP payments. Others argued against such a list based on the need to be flexible. To best meet the local needs, this information will be available to the public at the time of sign-up.

Commenters asserted that payments should be variable over the life of the contract so that rates are consistent with the local trends. Other commenters asserted that those producers obtaining contracts in a particular year should receive higher rates in future years if the actual costs increase. We made no changes based on these comments. We want to use whatever new funding we have to enroll more producers in CSP, by statute, the rates are based and set according to the 2001 crop year.

As NRCS was developing the CSP stewardship payment provisions, research of the history of the establishment of similar rental payments for the CRP indicated that producers were concerned about the potential effects of the CSP rental payments levels on the land prices and rental values. Therefore to avoid possible distortions in those prices and values, NRCS is providing that the total CSP contract payment (combination of the stewardship, existing and enhancement payments) not exceed the following percentage payment rate (the amount prior to application of the reduction factor) for the applicable Tier level: 15 percent for Tier I, 25 percent for Tier II and 40 percent for Tier III. However the new practice payment will

be exempt from this limitation and will be excluded from the computation of the limitation. NRCS requests comments on this limitation for consideration in the administration of CSP sign-ups.

In addition, NRCS is reviewing a process to allow the existing practice payments to be calculated as a percentage of the stewardship payment, allowing for paperwork reduction burden for producers and administrative efficiency for the agency. NRCS requests comments on this proposal which will be tested during the FY 2004 sign-up.

##### B. Stewardship Payment Component

NRCS will apply a consistent reduction factor to all regional rental rates to scale down the share of payments going to base payments (for all tiers of participation). The more that total program payments are made toward aspects directly related to additional environmental performance, rather than on stewardship payments, the more positive conservation results are likely to be obtained. The results of the CSP proposed rule economic analysis indicated that, if all other payment are held constant, the lower the reduction factor used on regional rental rates, the less the effect the stewardship payment has on the overall producer payment. This results in more net environmental benefits accruing from the program. This will lower payments to producers, but does it in an equitable manner and allows more producers to participate within the available funding. NRCS proposes that the stewardship rate, once established, will be fixed over the life of the program.

The CSP Interim Final Rule Benefit Cost Assessment indicates that, depending upon the magnitude of the CSP, stewardship payments can have a significant effect on program participation and has the potential of greatly effecting regional equity. A key consideration is whether the use of regional or local rental rates maintains "regional equity." Stewardship payments calculated from national average rental rates are equitable in the sense that the payment rate per acre is uniform. However, this method of calculating payments is less equitable on a per-farm basis. Where land rental rates are low, farms tend to be large compared to those in areas of high rental rates. On a per farm basis, then, overall stewardship payments could be quite large on large farms located in areas where land rental rates are low when compared to smaller farms located in areas where land rental rates are higher. Larger farms in areas with lower rental rates would incur a

disproportionately large increase in farm incomes and (if payments are capitalized into land values) wealth. Thus, the goal of regional equity is best served by using local rental rates to calculate stewardship payments. NRCS invites comment on the appropriate reduction factor, and whether it should be fixed or vary by sign-up.

Many commenters including farm organization rejected the formulation of the base payment in the proposed rule especially the use of a reduction factor. One stated, "The proposed regulation places a disproportionate amount of the rental payment on enhancement activities rather than base or maintenance payments. One of the stated purposes of the CSP was to reward producers who were good conservation stewards based on practices already in place. While it is desirable to encourage further conservation enhancement, the proposed regulation provides that only 5 to 15 percent of the respective tier payments can be expended for base payments. We believe that to the extent allowable in the statute, a higher percentage of the rental payment should be made to producers who have accomplished conservation improvements. \* \* \* this low percentage of base payment rental will discourage producers from participating in the CSP. Because of our belief that the base payments represent too small a percentage of the total payment, we would also oppose any across-the-board scale down of such payments as a means to allocate limited funds." The statute provides for limits on the base payment as a percentage of the total contract limit of 25 percent for Tier I and 30 percent in Tiers II and III.

At a listening session, one commenter was concerned that CSP had an impact on the producer's farm program base, and explained that the use of the term "base payment" could be confused with the "base" acres from farm programs. In order to avoid any further confusion, the "base payment" was renamed "stewardship payment" for clarification purposes.

Commenters asserted that they support a method where the local land rental rates only account for a small portion of the base payment to producers, and thereby prevent any bias towards States with big land values. The statute requires that any alternative form of base payment take into account the issue of regional equity. The process developed by NRCS takes land value into account.

Commenters asserted that they strongly oppose the proposal to use State and local rental rates over a set

national rate. NRCS has proposed an alternate stewardship payment system using statistical techniques in an analysis of land value, CRP rental rate, and NASS rental rate data sets along with a reduction factor based on data developed at the county level and reviewed by the State Conservationist. In order to allow for maximizing the level of enhancements for additional environmental performance above the minimum and to reduce the skew between small and large operations, the stewardship payment used a reduction factor. After considering the comments and the budget impacts, NRCS has adjusted the reduction factor from the proposed level of 0.1 for all stewardship payments to 0.25 for Tier I 0.50 for Tier II, and 0.75 for Tier III.

Many commenters asserted that various types of land should have a higher payment than assigned. For example, commenters argued that corn and bean rotation farmers should not get more than "a conservation minded hay and pasture farmer." Some commenters asserted that pasture land should be classified as cropland. While other commenters asserted that base payments should be based on NRCS land capability classes and not on current land use. Based on these comments, NRCS has created a definition and land use for pastured cropland.

NRCS recognizes that decisions about the proper use and management of the resources that support agricultural operations are made on a daily basis. In some instances, a management decision may be made that causes a major shift in land use, such as changes from a less intensive use or from a more intensive land use. For example, a dairy operation that is using cropland to grow forages may convert to a rotational grazing system. This reduction in land use intensity has many associated environmental benefits. NRCS requested comments on how the base payment could be calculated in this situation. Under the proposed rule, the land use conversion would change the basis from a cropland (higher) payment per acre rate to a pasture (lower) payment per acre.

Concerns were expressed on "determining base payments for pasture and grazing land, the proposed rule would determine the cash rent value of the land based on how the land is being used currently rather than by land capability. Since rental rates for pasture are far lower than for cropland, base payments would be far lower for grazers, even if their land is fully capable of producing crops and, in a different owner or operator's hands, might well be cropped. Land that has

been placed in permanent cover, a practice with enormous environmental benefits, is unwisely penalized by the proposal."

By statute, the base payment rates must be based on land use. An idea forwarded in the comments was to create another category of land termed "pastured-cropland," meaning that the land has the capability to support cropland but a management decision was made to put the land into pasture. The comments recommend that the pastured-cropland base payment be made according to the cropland base payment rate. We made no changes based on these comments. Land uses were used to set the stewardship payment rates rather than land capability classes.

Commenters asserted that incidental forest land should be defined in various ways so as to provide a basis for obtaining a base rate value. Based on these and other comments, NRCS has set a definition for incidental forest land, and the stewardship payment will be the same as the adjacent benefiting land.

Commenters asserted that CSP funds should only be used for base payments and not for new practices. We made no changes based on these comments. The statute authorizes payments for both new and existing practices.

Commenters asserted that NRCS should develop criteria for construction of enrollment categories. NRCS provided in the proposal that they would publish additional information about the construction of the enrollment categories and those were published in the **Federal Register** on May 4, 2004 (69 FR 24560).

#### C. Existing and New Practice Payment Components

Some commenters were concerned about the "very limited number" of conservation practices available for the existing and new practice payments citing that the law specifically authorizes the use of new, innovative practices through on-farm demonstration and pilot testing. They suggested the proposed restriction is not consistent with NRCS' policy of "site-specific" conservation and will stifle farmer innovation.

Some commenters were concerned that payments for new practices should be as close to the statutory limit of "up to 75 percent" as possible. Other commenters asserted that 5 percent cost share is not sufficient help to struggling farmers and that 75 percent is more realistic. The reference to 5 percent cost share was mentioned as an alternative in the economic analysis in the

proposed rule and we did not adopt the 5 percent rate that was evaluated in the analysis. NRCS intends to set the appropriate cost-share rate for new practice payments at a rate similar to or less than the EQIP rates but no more than 50 percent.

NRCS will maintain the concept of limiting the practice payment options and encourage enhancement activities that provide for additional environmental performance. This rule also encourages farmer innovation through a robust process for on-farm demonstration and pilot testing of innovative practices.

The Chief will determine and announce which practices will be eligible for new and existing practice payments s available for a given sign-up based on factors described in the regulation including: The potential conservation benefits; the degree of treatment of significant resource concerns; the number of resource concerns the practice or activity will address; new and emerging conservation technology; and the need for cost-share assistance for specific practices and activities to help producers achieve higher management intensity levels or to advance in tiers of eligibility. State Conservationists will have an opportunity to tailor the lists to meet the needs of local and State conditions. Not all practices will be available through CSP for payment. NRCS believes that CSP should work together as a complement with, rather than a substitute for, cost share programs such as EQIP, WHIP, and continuous CRP, as well as other Federal, non-Federal, State, local and Tribal programs. Alternatively, producers can install structural practices through other State or Federal programs, such as WHIP, and then qualify for a future CSP contract to help with the maintenance of those and other practices.

In addition, unlike EQIP and WHIP, CSP emphasizes producers who have already met the resource concern's minimum level of treatment, encourage them to do more, and rewards them for their exceptional effort. CSP differs from existing programs by focusing on a whole farm planning approach. Programs such as EQIP do not.

Commenters asserted that NRCS should provide for on-going support rather than a one time payment for adoption of new stewardship practices. We made no changes based on these comments. New practice payments are intended to cover initial practice installation and application costs. As with other NRCS cost-share programs, the participant is required to maintain the practice for the life of the practice

as part of the contract obligation for new practice installation.

Commenters asserted that maintenance payments should be based on the level of management intensity. We made no changes based on these comments. Maintenance payments are provided for existing practices at the time of enrollment and are based according to the 2001 crop year as prescribed in the statute.

Commenters asserted that new practices should be considered "existing practices" after they are installed. We made no changes based on these comments. New practices that are installed with CSP financial assistance are required to be maintained for the life of the practice as a condition of receiving the cost-share and, thus, are not eligible for existing practice payments.

Commenters asserted that new practices should be only those that would assist producers to move from one Tier to the next. We made no changes based on these comments. NRCS is utilizing the new practice payment to assist the producers in gaining additional environmental performance when it is considered that a cost-share would be appropriate. Some of the practices selected may, in fact, assist a participant move to a higher Tier, but it is not the major consideration. The CSP is not a substitute for other conservation cost-share or assistance programs.

#### D. Enhancement Payment Component

CSP provides a substantial portion of the total payment as enhancements. This recognizes those who have already provided environmental benefits and are willing to do more. The interim final rule language states "Enhancement payments will be determined based on a given activity's cost and expected net environmental benefits, and the payment amount will be an amount and at a rate necessary to encourage a participant to perform a management practice or measure, resource assessment and evaluation project, or field-test a research, demonstration, or pilot project, that would not otherwise be initiated without government assistance."

One group commented, "The enhanced payments \* \* \* should not be treated as cost-share but rather as real bonuses to reward exceptional performance." NRCS agrees with the comment. No changes were made as a result of the comment. Enhancement payments are intended as payments for exceptional conservation efforts and performance above the minimum level of treatment.

Some commenters were concerned that the proposed rule did not provide for specific utilization of the 18 practices listed in the statute as enhancements. The statutory list referred to is permissive, rather than required, and includes resource conserving crop rotation, rotational grazing, and buffers, and allows the Secretary discretion to add to the list. There are certainly situations where one or more of the listed practices would provide additional environmental performance above the quality criteria for a specific resource concern. In these cases, the performance of the practice above the minimum criteria would qualify as an enhancement payment.

Alternatively in other situations, some of the practices on the list are practices necessary to achieve the minimum tier requirements of meeting the quality criteria for one or more resource concerns. An activity must contribute to exceeding the minimum requirements to become eligible for an enhancement payment. For example, nutrient and pesticide management are requirements for the minimum quality criteria for water quality on operations where nutrients and pesticides are a concern. Where nutrient and pest management are not concerns, they would not be required and should not receive additional payments unless the activities would provide an additional environmental benefit. NRCS does not intend to provide a payment for an activity on an agricultural operation that does not serve the purpose of either addressing a resource concern (stewardship payment) or providing an additional environmental benefit (enhancement payment).

Commenters asserted that enhancements should include all existing practices and not be limited to new practices only. Some commenters asserted that enhancements should be determined on a nationwide basis. We made no changes based on these comments. Enhancements are those activities that result in a level of resource treatment that exceeds the quality criteria in the FOTG. Participants will earn an enhancement payment for their conservation activities that exceed the quality criteria and, thus, provide additional benefits. NRCS will develop a list of approved enhancement practices and activities that provide additional environmental performance based upon local resource concerns.

Commenters asserted that we should add an energy component to the list of available enhancement activities. We made no changes based on these comments. Although NRCS is not

making changes to the rule, NRCS is developing enhancement activities intended to provide positive impacts on energy management.

Commenters asserted that enhancement payment rates should cover the cost of implementing the enhancement activity, including management activities. Some commenters asserted that enhancement activities should be weighted according to the environmental benefit they provide. We made no changes based on these comments. Enhancement payments for practices and activities will either be based on estimated local cost, or will be commensurate with the expected net environmental benefits when utilizing an index or performance outcome scale.

Commenters asserted that NRCS should add preservation of endangered species as an enhancement. We made no changes based on these comments. CSP will provide enhancements for improving wildlife habitat for a broad range of plant and animal species, including threatened and endangered species.

Commenters asserted that enhancement should not be required as a condition for participation in CSP. We made no changes based on these comments. A producer can participate in CSP without agreeing to carry out enhancements and be eligible to collect a stewardship and existing practice payment. However, the enrollment categories are set to ensure that those who are not willing to achieve a higher level of environmental performance will be placed in a lower category than participants willing to do more.

Commenters asserted that NRCS should add a 6th category for enhancement payments, *i.e.*, a business management enhancement category. We made no changes based on these comments because the 5 categories are specified by statute.

#### 5. Definition of Agricultural Operation Agricultural Operation

By statute, Tier I payments are provided for conservation activities on a portion of an "agricultural operation." Also by statute, Tier II and III payments are provided for conservation activities on the entire "agricultural operation." Defining an agricultural operation for the Conservation Security Program is an important part in determining the Tier of the contract, stewardship payments, and the required level of conservation treatment needed for participation.

The proposed rule defined the term "agricultural operation" as "all agricultural land, and other lands

determined by the Chief, whether contiguous or noncontiguous, under the control of the participant and constituting a cohesive management unit, where the participant provides active personal management of the operation on the date of enrollment.” There was substantial concern about this definition.

Some commenters were concerned that the proposed definition was too broad in scope and subject to inconsistent interpretation. They were concerned that the definition was inconsistent with farm program operation definitions. Others were concerned that, under the current definition, this program would only be viable for small farmers who own contiguous property, rather than producers who operate many different units with multiple landowners. Some commenters suggested that the definition of agricultural operation be the same as the definition in 7 CFR Part 718 for “farm” used by Farm Services Agency (FSA). They cite ease of matching commodity programs and farm records, familiarity, and other reasons for this approach. Commenters also were concerned that the definition would not allow tenants to work with multiple landowners.

Several groups supported a “one producer—one contract” approach. One group opposed more than one CSP contract per operator. Other commenters argued that the definition of agricultural operation should be revised to allow producers to obtain more than one contract during a sign-up. In this regard, commenters asserted that the term agricultural operation should be defined to allow the flexibility of separate CSP contracts by FSA farm numbers, should delete the requirement that an agricultural operation: constitute a cohesive management unit,” be defined as “contiguous acres that are part of an agricultural operation,” or be defined to exclude “other land on which food, fiber, and other agricultural products are produced.”

Most producers who participated in early CSP workshops conducted by NRCS stressed a need to prevent producers from abusing the payment limitations by strategically defining agricultural operation. Concerns have also been raised that producers would reconstitute their holdings to maximize the number of contracts, and, therefore, maximize payments under CSP if the definition of agricultural operation was not sufficient to limit such reconstitution.

In defining agricultural operation in the proposed rule, NRCS attempted to balance competing concerns. If the

definition allowed a producer to reconstitute or split holdings, the producer could submit numerous CSP applications for what is really a single cohesive production unit. If the definition were to be overly broad, a producer’s legitimately unique operations would be inappropriately encompassed into one “agricultural operation.”

In view of the many comments received in opposition to the definition in the proposed rule, we have defined agricultural operation in the interim final rule to mean “all agricultural land, and other lands determined by the Chief, whether contiguous or noncontiguous, under the control of the participant and constituting a cohesive management unit, that is operated with equipment, labor, accounting system, and management that is substantially separate from any other.” We believe this definition reflects the common meaning of the term consistent with the statutory intent to encourage as many as possible to use good conservation practices. Specifically, we agree that a program that would exclude such tenant would be inconsistent with the statutory scheme by limiting the effort to encourage conservation practices to benefit the Nation.

In addition, we have included new language in section 1469.5 that will allow producers to delineate their agricultural operation. This approach will allow producers whose land is not included in the farm program system to delineate their agricultural operation while allowing those applicants who use the FSA farm and tract system to delineate as a minimum one farm and allowing applicants to aggregate farms, if desired, into a single contract as long as they meet the definition within this interim final rule. In order to avoid a multitude of similar contracts with common conservation management, NRCS will limit each applicant to only one application per sign-up and one active CSP contract. This will minimize farm reconstitutions, provide flexibility to the applicants, and allow for a delineation of agricultural operation that is consistent with other NRCS programs.

Commenters also suggested that if the producer obtains additional land after getting a CSP contract, the additional land should not be subject to the CSP requirements. Others asserted that the additional land should be allowed to be added to the contract. NRCS has made no changes to the regulatory language. Section 1469.24 of the proposed rule allowed for existing CSP Contract to be modified upon agreement between the Chief and the participant. Similarly, in

this interim rule, section 1469.24(a)(1) allows for contracts to be modified at the request of the participant, if the modification is consistent with the purposes of the conservation security program. We believe this provision might be used to allow producers to add or subtract land from their contract. However, we recognize that additional land added to contracts may constrain our funding of future contracts. We are requesting further comment on criteria that NRCS would use to determine if the addition or subtraction of land from a contract is consistent with the purposes of the conservation security program or whether other constraints should be used to ensure that the addition of land to existing contracts does not adversely affect funding of new contracts in future years.

Commenters were also suggested that if property changes ownership while a CSP contract is in effect, the new buyer should have the option of continuing the contract and the seller should be liable for any charges and penalties. We made no changes based on these comments. The interim final rule adopts provision of the proposed rule to allow a contract transfer when there is agreement to all parties of the contract.

Commenters asserted that a new buyer should be allowed to continue the contract if all of the parties, including NRCS, agree that it is advantageous to do so. We have not adopted the suggestion that the buyer alone should have the option of continuing the contract because it might not be in the interest of the Government to continue the contract. Also, any amounts due the Government would be required to be paid by the contract holder.

#### *6. State and Local Input Into the CSP*

##### *State and Local Issues*

Commenters asserted that the different aspects of the CSP should be determined by the NRCS State Conservationist in consultation with the State Technical Committee. We made no changes based on these comments. Those decisions that are national in scope, such as funding eligibility requirements and final decision making regarding watershed selection, must be made at the national level. However, the national office will regularly obtain recommendations from the state and local level for all aspects of the CSP. Further, many of the determinations regarding the CSP originate at the State or local level, such as determinations regarding conservation practices that are used for maintenance practices, new practices, and enhancements. The State Technical Committee and the local work

groups do provide advice, rather than consultation, to the NRCS State Conservationist.

#### Coordination With Other Programs

NRCS sought comment on the opportunity to use CSP in a collaborative mode with other programs to effectively leverage Federal contributions to natural resource improvement and enhancement.

The 2002 Farm Bill provided the funding and authorities to construct a balanced conservation portfolio that pays off for taxpayers, producers, and the environment. The commenters urged that NRCS take full advantage of this opportunity by ramping up CSP to realize its full potential, working to secure full funding for all of the programs in our conservation portfolio, and managing conservation programs in a way that balances the three components of that portfolio effectively and flexibly.

NRCS appreciates this and other comments regarding the role of CSP in the USDA conservation portfolio, and will keep these ideas in mind as policy adjustments are made in future legislation and regulations.

Commenters asserted that the CSP program should be coordinated with other programs, such as using common applications, common eligibility requirements, common cost-share rates, and common rules for incentives. We made no changes based on these comments. NRCS is working to streamline its conservation programs and is looking at adopting as many common aspects and provisions as each program authority allows.

Commenters asserted that the producer should also be required to be in compliance with other relevant laws applicable to a farming operation. No changes were made based on this comment. Although CSP is a voluntary program, applicants are required to be in compliance with relevant federal laws applicable to a farming operation, such as the Clean Water Act and cultural resources requirements. The FOTGs commonly include resource based information particular to State and local requirements such as state-level nutrient management requirements, and various other regulations concerning odor, pesticide application, and set-backs.

#### Section-by-Section Comments on 7 CFR Part 1469

The following discussion summarizes the changes in provisions in each section from the proposed rule, provides the basis for the approach taken, and requests public comment on open

issues. Many comments of the collective were instructional and were used to provide clarity. Sections 1469.5, 1469.6, and 1469.20 were restructured for clarity as recommended by one commenter.

#### Section 1469.1 Applicability

The proposed rule indicated that farmers and ranchers could receive program assistance to address soil, water, air, and related natural resources concerns on private and Tribal lands, and to encourage enhancements on their lands in an environmentally beneficial and cost-effective manner. One commenter noted "Many private agricultural operations include leased or permitted use of federal or other public land, and these operations would not be viable without the resources available through those leases or permits. The leased or permitted use of those Federal or public resources is integral to the agricultural operation and must be considered as part of the entire agricultural operation." The commenter also recommended public land should be eligible for enrollment into the CSP, except when it is determined to be considered integral to the entire agricultural operation of the applicant. This rule language is further clarified to assure that only privately-owned or Tribal land is included within the CSP; otherwise, funds appropriated for CSP to be used on private and Tribal working lands would be supplementing the budgets of Federal, State, or local agencies whose responsibility it is to manage those lands or hold accountable those people who manage those lands for them.

One commenter suggested that we should drop "Nation" from the term "Tribal Nation" because not all tribes are designated as a Nation. NRCS agrees with this comment and has made the clarification.

#### Section 1469.2 Administration

Concerns were expressed regarding the roles of participation of State fish and wildlife agencies and the U.S. Fish and Wildlife Service because the State Technical Committee is not required to seek or consider their advice. Commenters recommended requiring concurrence with the U.S. Fish and Wildlife Service and the respective state fish and wildlife agency for determination of at-risk species. NRCS will continue to follow the State Technical Committee regulation, but has made a commitment to assure that all voices are heard in this public process and appropriately documented in the minutes of such meetings.

In section 1469.2(f) the acronym NRCS was added to the section to avoid confusion with a Tribal Chief.

#### Section 1469.3 Definitions

Some definitions have slight editorial changes for clarification that are not discussed here.

For clarification, the term "activity" was added to define the aggregate of actions that are not included as part of a conservation practice, such as a measure or an on-farm demonstration, pilot, or assessment.

#### Agriculture Land

Commenters were concerned about the inclusion of different landscapes within the term "agricultural land." "The statute specifically states, grassland, prairie land, improved pasture land." These land types are now expressly included within the rangeland and pastureland definitions. Commenters were also concerned about the exclusion of agroforestry practices. Land with the agroforestry practices of strip cropping, alley cropping and silvopasture practices have been added to the definition.

#### Agricultural Operation

As discussed above, we have revised the definition of agricultural operation in the interim final rule to mean "all agricultural land, and other lands determined by the Chief, whether contiguous or noncontiguous, under the control of the participant and constituting a cohesive management unit, that is operated with equipment, labor, accounting system, and management that is substantially separate from any other."

#### Active Personal Management

This definition was deleted as a result of the change in the agricultural operation definition.

#### At-Risk Species

Commenters asserted that the regulations should not include a reference to at-risk species, since the term has conflicting definitions with wildlife regulatory agencies. Other commenters asserted that we should use accepted categories of endangered or threatened species from the Endangered Species Act. NRCS has reconsidered the issue, and has deleted the term "at-risk species" and substituted appropriate language regarding "important wildlife and fisheries habitat" in Section 1469.6 (a) and (b) to achieve the same result but avoid confusion. By statute, the CSP includes "fish and wildlife habitat conservation, restoration, and

management” as intended conservation practices.

#### Cropland

This definition originally included cultivated and noncultivated subcategories. These distinctions resulted in unnecessary complexity in the program and were removed without affecting the types of crops included.

#### Farm

This definition was deleted as a result of the change in the agricultural operation definition.

#### Joint Operation

The regulatory citation was wrong as a result of a typographical error and was changed.

#### Incidental Forestland

Commenters asserted that the provisions requiring that tree-covered grazing areas must have a canopy of less than 40 percent to be eligible for a CSP contract is not acceptable for high elevation grazing areas of San Carlos Apache Reservation where even some thinned areas have estimated canopy cover of more than 40 percent. Based on this and other comments, NRCS has added a definition of incidental forestland which includes all non-linear forested riparian areas and associated small wood lots and small adjacent areas located within the boundaries of the agricultural operation that are managed to maximize wildlife habitat values.

#### Land Management Practice

“Resource conserving crop rotation” was excluded from this definition in the proposed rule, which was pointed out by numerous comments and has been added.

#### Pastured Cropland

*This definition is added based on comments received. Pastured cropland means a land cover/use category that includes areas used for the production of pasture in grass-based livestock production systems that could support adapted crops for harvest, including but not limited to land in row crops or close-grown crops, and forage crops that are in a rotation with row or close-grown crops.*

#### Priority Natural Resource Concern

For clarification, this term was added to differentiate those concerns used to set enhancement payments from the Nationally Significant Resource Concerns, which are used for setting the minimum eligibility criteria and locally significant resource concern necessary

to satisfy contract requirements for Tier II.

#### Resource Concern

One comment requested that we exclude from the definition of resource concern elements of FOTGs that are primarily related to production and may adversely effect the environment.

In response, NRCS has changed section 1469.5(e)(1)(iii) to clarify that practices or activities will not be required for participation in Tier III unless they would have an ultimate conservation benefit when combined with the other conservation treatments as demonstrated by the Conservation Practice Physical Effects matrix in the FOTG and NRCS local professional judgment.

#### Resource Conserving Crop Rotation

Commenters asked for examples of this definition and they have been included.

#### Soil Quality

This definition has been clarified to describe the exact processes of organic matter depletion and to include salinity, which was inadvertently omitted in the proposed rule.

#### Stewardship Payment

One person commented that the term “base payment” for CSP was confusing with the term “base payment” used by other farm program payments. The CSP base payment has been renamed the “stewardship payment” for clarification and to better reflect its function.

#### Water Quality

Commenters asked that flexibility be allowed to adjust for other concerns identified by state water quality standards. This language is included.

#### Section 1469.4 Significant Resource Concerns

This section proposes water quality and soil quality as nationally significant resource concerns that will be addressed in all contracts and allows the Chief to designate additional nationally significant resource concerns for a given sign-up. NRCS specifically sought comment on the designation of nationally significant resource concerns. Commenters asked that flexibility be added to the rule for the Chief to add resource concerns that are not considered national in nature but comply with the intent to consider state or local conservation priorities. This was accepted and added along with the new definition for “priority natural resource concern”.

Commenters expressed fear that the resource concerns are too broad and

restrictive to be easily attained and practically assessed without intensive training and without an intense field examination. NRCS is setting a specific minimum level of treatment in this rule. NRCS is emphasizing water quality and soil quality because it believes such emphasis will deliver the greatest net resource benefits from the program, as noted in the above discussion. We believe the concerns can be practically assessed through the dual verification system of an interview and a follow-up field visit with NRCS’ long history of developing and applying sound science and technologies that effectively address water quality and soil quality problems and conservation opportunities.

#### Section 1469.5 Eligibility Requirements

##### 1. General Changes

In response to comments that the proposed rule was hard to follow, the following sections were restructured and moved to noted locations and explained. Priority watershed subsection 1469.5(e) is moved to 1469.6(a). Subsections 1469.5 (a)–(d) are restructured into subsections 1469.5(c)–(e) with eligibility criteria grouped into three general categories for improved clarity: Applicant eligibility, land eligibility, and conservation standards. A new subsection explaining the delineation of the agricultural operation has been added as 1469.5(d)(4). A new subsection explaining the minimum level of treatment for each tier has been added as 1469.5(e)(2)–(4).

Also in response to comments, a general section 1469.5(a) was added to introduce the section which now provides the requirements for participant and land eligibility, and outlines the conservation requirements for the three tiers of CSP participation.

##### 2. Eligible Applicants

Proposed rule section 1469.5(a)(2) regarding having an interest in the farming operation was considered unnecessary since the statutory definition of “producer” for CSP requires that the “producer” share in the risk of producing any crop or livestock and be entitled to share in the crop or livestock available for marketing from a farm. The proposed rule section was deleted and language added to better conform to the statute in section 1469.5(c)(3).

*Control.* To be eligible to participate in CSP under proposed § 1469.5, an applicant must have control of the land for the life of the proposed contract period. Some commenters asserted that NRCS should allow those without long-

term commitments to participate since they need CSP payments to be able to take appropriate conservation measures. Some argued that the contracts should be for the duration of the term of the producer's rental contracts. Commenters asserted that an adequate assurance of control might be a letter of support or a statement of intent to continue leasing from the landowner rather than an actual multiyear written lease. As with the Advanced Notice of Proposed Rulemaking, many who commented on the proposed rule desired to make CSP supportive for those who actually work the land.

By statute, a Tier I conservation security contract is for a period of 5 years and a Tier II or Tier III conservation security contract must be for not less than 5 years and no more than 10 years. NRCS must have assurance that a producer will have control over the use of the property to achieve the purposes of the CSP plan and to meet the statutory requirements. We have clarified the language in the rule to provide that NRCS will continue to accept letters as proof of control of the land as is done in EQIP and will adopt similar handbook requirements for CSP.

Commenters asserted that NRCS should remove provisions requiring lands that are not under control of the operator for the entire contract to be maintained to the same level as contract acres even though they are not eligible for payment. NRCS received comments that the proposed rule requiring tenants to maintain conservation treatment on land that was not a part of their contract was unworkable. This is cited as unfair and would likely dissuade producers from participating in the program. NRCS agrees and this proposal is dropped in the interim final rule. The rule provides fair treatment for tenants, allowing a tenant's CSP contract to exclude such land entirely, or allowing the farmer or rancher to receive CSP payments on land meeting CSP standards as long as the tenant controls the land and is in the plan and contract.

*Applicant.* Some commenters asserted that eligibility provisions should favor small farms. Others asserted that the eligibility provisions should favor large farms. Some asserted that eligibility should be limited ownership of 50 acres or more. Others suggested that funding should go only to operators who derive the majority of their income from production agriculture. We made no changes based on these comments. Although there are other statutory caps on USDA benefits, the statutory criteria for eligibility for CSP has nothing to do

with farm size or the where the majority of income is derived.

Commenters asserted that NRCS should give preferences to limited resource producers, but others argued that these producers should not be given any preferences. The interim final rule, 1469.6(b)(3)(ii), gives some preferences to limited resource producers by allowing limited resource producer participation to be a factor considered in developing the enrollment subcategories.

Commenters asserted that to be considered as "limited resource producers", such producers should have gross sales of not more than \$250,000 and total income below the 150 percent of the poverty level. Commenters asserted that for purposes of identifying limited resource producers, references to county median household income should be dropped but rather should include native Americans on native American controlled/owned land with direct or indirect gross farm sales of less than \$100,000 or \$150,000 for livestock producers in each of 2 previous years using Commerce Department data, and has a total household income based on family size at or below poverty level in each of 2 previous years using Commerce Department data. Other commenters asserted that tribes should categorically be classified as limited resource producers. We made no changes based on these comments. The definition for a limited resource producer is a USDA-wide definition and there is no reason to change it for CSP.

Commenters asserted that the regulations should give preferences to beginning farmers so that they would have the means to improve their land. We made no changes based on these comments. Many beginning farmers will be able to participate in CSP. However, the statutory scheme does not include eligibility preferences for ensuring that beginning farmers participate. Instead, it allows for a higher rate of cost-share assistance to install new practices for beginning farmers to give increased incentives and support for those beginning farmers who do participate.

### 3. Eligible Land

Some commenters were unclear what "areas outside the boundary of the agricultural operation" meant in proposed rule subsection 1469.5(b)(5). That subsection has been renumbered 1469.5(d)(1)(v) and remains as proposed. The intention is to assure that for Tier III contract holders; all land including farmsteads, ranch sites, and other developed areas are treated to the high standard of performance for that tier.

The subsections from the proposed rule remain essentially unchanged with two exceptions. One group suggested clarifying that "land, such as CRP land, excluded from enrollment in CSP, may nonetheless be considered for whether an applicant meets quality criteria. This means, for example, that a producer can enroll a buffer in CRP and use that buffer to demonstrate that the producer is meeting water quality criteria." NRCS agrees and added subsection 1469.5(d)(2)(v). Also subsection 1469.5(d)(4), was added to clarify the requirements for delineation of the agricultural operation.

*Statutory limitations.* By statute, only certain land is eligible for enrollment in the CSP. With exclusions, enrollment is limited to private agricultural land (including cropland, grassland, prairie land, improved pasture land, and rangeland), certain land under the jurisdiction of an Indian tribe, and forested land that is an incidental part of an agricultural operation. The following lands are specifically excluded from eligibility for enrollment in the CSP:

- Land enrolled in the conservation reserve program;
- Land enrolled in the wetlands reserve program;
- Land enrolled in the grassland reserve program; and,
- Land used for crop production after May 13, 2002 that had not been planted, considered to be planted, or devoted to crop production for at least 4 of the six years preceding May 13, 2002 (with certain exceptions), or that has been maintained using long-term crop rotation practices.

Commenters asserted that the list of eligible lands should be expanded to include excluded lands, such as public lands, forested lands, and lands enrolled in CRP, WRP, and GRP. We made no changes based on these comments. We have no authority to expand the list of eligible lands in contravention of the statute.

By statute, a producer may not receive payments under the conservation security program and any other conservation program administered by the USDA for the same practices on the same land. Also by statute, payments may not be made for construction or maintenance of animal waste transport or treatment facilities or associated waste transport of transfer devices for animal feeding operations or, as determined by the Secretary, for the purchase or maintenance of equipment or a non-land based structure that is not integral to a land-based practice. Some commenters asserted that the regulations should not follow these

provisions. We made no changes based on these comments. We have no authority to act contrary to these provisions.

Commenters asserted that land used for corn and bean production should not be eligible for CSP. We made no changes based on these comments. By statute, cropland is eligible land for the CSP.

Commenters asserted that only permanently protected farms should be eligible for CSP since they will never be developed and could be a permanent source of conservation. We made no changes based on these comments. Congress has not given any indication the CSP statutory provisions that the program be limited to permanently protected lands and has limited the CSP contracts to no more than 5 or ten years depending on tier.

Commenters asserted that CSP payments should be made to improve stewardship rather than to take the land out of production. We made no changes based on these comments. The statutory scheme concerns payments for working productive land rather than land taken out of production.

Commenters asserted that NRCS should specify a maximum allowable enrollment of forest land. Based on the comments, NRCS set size limits in the definition of "incidental forest land", such that individual parcels that are not part of a linear conservation practice are limited in size to 10 acres or less with a combined acreage, not to exceed 10% of the total offered acres.

#### 4. Conservation Standards

The proposed rule had separately identified minimum tier eligibility requirements and the minimum level of treatment by tier. For clarity, 1469.5(e) groups these both under the term conservation standards and makes clear specific minimum standards for each national priority resource concern.

Many commenters were concerned that the minimum tier eligibility requirements were too strict or that farmers and ranchers should be allowed to enter the program prior to solving all soil and water resource concerns without suggestions on how these ideas would be carried out in the contracts in light of the budget dilemma. This is discussed earlier in this preamble.

The authority for the establishment of these minimum performance standards is section 1238A(d)(6) of the Food Security Act, 16 U.S.C. 3838a(d)(6): "Minimum Requirements. The minimum requirements for each tier of conservation contracts \* \* \* shall be determined and approved by the Secretary."

Several commenters noted "CSP is \* \* \* intended to be the first truly comprehensive conservation program. It is intended to let farmers address both the unique and the ordinary resource problems of their specific site. It is intended to encourage an integrated approach that solves multiple problems. It should encourage farming systems that prevent problems in the first place," and exclude "quality criteria unrelated or adverse to the environment." In response, NRCS has drafted subsection 1469.5(e)(1)(iii) to clarify that practices or activities shall not be required for participation in Tier III unless they would have an ultimate conservation benefit when combined with the other conservation treatments as demonstrated by the Conservation Practice Physical Effects matrix in the FOTG.

#### *Section 1469.6 Enrollment Criteria and Selection Process*

Proposed subsection 1469.5(e), which relates to priority watershed selection, has been moved to section 1469.6(a) to be included in the enrollment criteria and selection process. The comments and responses regarding the watershed process and enrollment categories for this subsection are discussed above.

#### 1. Selection and Funding of Watersheds

For FY 2004, NRCS used a watershed prioritization approach based on:

(1) A composite analysis of national agriculture datasets consisting of eligible land uses, input intensities and stewardship.

(2) Weighting factors that place greater emphasis on input intensities and stewardship categories.

(3) An analysis of NRCS's technical and staff capacity to ensure effective and efficient delivery of the program in selected watersheds for FY 2004.

(4) Recognition of a limited number of regional resource issues to enhance the program's environmental goals.

The NRCS national office compiled the quantitative data for conformance with criteria (1) and (2) using National Resource Inventory and Census of Agriculture data. This data was aggregated to the U.S. Geological Survey's 8-digit Hydrologic Unit Code and arrayed within the Economic Research Service's Farm Production Regions according to quartile distribution. Ranked, weighted watershed maps were produced.

A list of candidate watersheds was generated. State Conservationists (STC) were queried regarding Criteria 3. Watersheds were excluded based on the STC's assessment of locations where staff capacity was inadequate and

required technical tools, specifically the Revised Uniform Soil Loss Equation Version 2.0 and Customer Service Toolkit would not be fully operational for a 2004 sign-up.

Watersheds were also evaluated using Criteria 4 from a national perspective in consultation with STCs regarding regional resource issues that would enhance CSP's environmental goals. The criteria were refined from the factors listed in the proposed rule to reflect potential degradation of surface and ground water, of soil quality and grazing lands. The interim final rule has been revised to update these criteria. Preference was given to a limited number of watersheds where improving resources would assist the recovery of threatened and endangered species or add measurably to critical resource recovery efforts.

NRCS is seeking additional comment on the process and proposals published in the Notice to the **Federal Register** from May 4, 2004, and this subsection of this rule.

#### 2. Enrollment Categories

The enrollment categories identify and categorize eligible producers within the selected watersheds for funding. Applicants are eligible to be enrolled based on the criteria listed in the Notice consistent with historic conservation performance established prior to the announcement of a sign-up and their willingness to do more, such as addressing locally identified resource concerns or providing important assessment and evaluation information. NRCS is seeking additional comment on the enrollment categories published in the Notice to the **Federal Register** from May 4, 2004, and this subsection of this rule. The comments will be considered in developing the FY 2005 sign-up and a final rule.

#### 3. Sign-Up

NRCS received comments opposed to discrete enrollment periods for CSP and suggesting the use of the continuous sign-up process used by other NRCS cost-share programs. It was expressed that this could: Make it difficult for farmers to sign-up if the limited period falls within planting and growing seasons; would concentrate requests for NRCS technical assistance in a limited period rather than spread out over the course of a full year; and result in "a stop-and-go CSP that would become subject to political manipulation". Others were opposed to the concept of CSP being implemented in any way that lacks transparency.

NRCS will make no changes based on these comments. In order to manage the

program, NRCS will continue to offer discrete sign-up periods initially. The rule provides no limit on the length of the sign-up period and could allow NRCS to move to a year-round sign-up if experience shows it to be beneficial to program management and meet customer needs. CSP sign-up will be transparent and fully accessible on the internet.

Commenters asserted that producers need at least 180 days for a sign-up. We made no changes based on these comments. Based on experience, we believe we can conduct a timely sign-up so that we establish a successful CSP in this fiscal year, which ends on September 30, 2004. The suggested 180 day sign-up would extend well beyond that date. NRCS is seeking comment on the length of sign-up in future years.

Commenters opposed the provisions allowing for additional eligibility criteria and additional contract requirements to be included in a CSP sign-up announcement. We made no changes based on these comments. Additional requirements in specific sign-up periods will allow NRCS to manage for environmental performance and budget exposure.

#### *Section 1469.7 Benchmark Condition Inventory and Conservation Stewardship Plan*

##### 1. Benchmark Condition Inventory

This subsection proposed that the applicant conduct a self assessment and establish an inventory of the benchmark conditions to identify the resource conditions of the agricultural operation following the NRCS planning process. NRCS sought comments on the utility of a self screening tool (both web-based and hardcopy) to assist producers in determining if they should consider application to CSP.

Many commenters were supportive of the concept of an applicant-initiated screening tool and benchmark condition inventory of the agricultural operation. One commenter suggested that the benchmark condition inventory not just specify existing conservation status, but include all proposed additional conservation measures, to be called the "proposed conservation plan outline." This is done to assure that the document submitted by the applicant provides all the information necessary to permit a preliminary judgment of eligibility and document the pending conservation stewardship plan. Although not included as a regulatory requirement, NRCS is considering adopting the proposed conservation stewardship plan outline beginning in FY.

##### 2. Conservation Stewardship Plan

NRCS found during discussions at the national listening sessions and other meetings, there was some confusion regarding the term "conservation security plan". Some were confused that it might have something to do with "Homeland Security" and some confused it with the "conservation compliance plan" required by the highly erodible land conservation requirements of the Food Security Act of 1985. NRCS decided to substitute the word "Stewardship" for "Security" to alleviate this confusion and place the emphasis of the plan name on the fundamental concept of the program—stewardship, although all characteristics and requirements set out in the authorizing statute for a "conservation security plan" will be maintained.

#### *Section 1469.8 Conservation Practices and Activities*

NRCS has adjusted the section title to include activities as well as practices. Activities include all conservation actions including measures and enhancement components, such as, on-farm demonstrations and pilots, and evaluation and assessment activities.

CSP emphasizes conservation and the improvement of quality of the soil, water, air, energy, plant, and animal life by addressing natural resource conditions, rather than using a prescriptive list of conservation practices and activities. The conservation stewardship plan will identify a suite of practices, treatments, and activities that a participant can use to mitigate or prevent a resource problem or to produce environmental benefits, such as carbon sequestration. One example is the use of the SCI. The producer has many conservation management options available to improve their rating on this index scale including changing tillage intensity or equipment, adjusting the crop rotation to include soil conserving crops, or adding additional practices or activities such as cover crops. A complete list of potential actions for selection would be impractical, but by working with a conservation professional, the options are easily revealed in the planning process and through the use of simple models. NRCS will be deploying a producer-friendly SCI web tool for use in preparing for the FY 2005 sign-up so producers will be able to assess their own progress in improving soil quality on cropland.

*Conservation practices and activities.* Proposed § 1469.8 set forth a mechanism for selecting conservation practices and activities eligible for CSP

to include listed structural and land management practices and intensive management activities. The conservation practices are selected after the watershed selections are made. Commenters asserted that all practices approved and listed in the NRCS FOTG should be included in list of conservation practices eligible for CSP. Other commenters suggested that specific conservation practices should be included in the list of conservation practices eligible for CSP. We made no changes based on these comments. This rule attempts to avoid program redundancy by focusing CSP on a specific list of eligible practices, for both the new and existing practice payments, rather than the complete laundry list of available practices and promoting intensive management activities as enhancement payments. State Conservationists will have the ability to tailor the lists to assure they meet the pressing natural resource needs of a portion of their State or a multi-State area. NRCS has proposed to manage all of its programs using a portfolio approach to reduce redundancy in program areas. NRCS believes that management of USDA conservation programs using a portfolio approach will help direct applicants toward the programs that best fits their needs, thereby maximizing the conservation and improvement of natural resources.

Some commenters suggested that producers should be allowed to develop their conservation security plans using all practices in the FOTG in their State, so they can have a full array of practices from which to choose to solve resources concerns." Some were concerned that the Chief would be developing the nationally eligible list, and that State Conservationists would not be including the State Technical Committee and local work groups in the process. In the FY 2004 sign-up, the State Conservationist tailored the lists for each watershed following the concept of these comments. NRCS will be reviewing the practical aspects of this list creation process during the FY 2004 sign-up. Since the State Conservationist is a designee of the Chief, subsection 1469.8(a)(2) from the proposed rule was determined to be redundant and has been removed.

Commenters asserted that NRCS should allow conditional approval of conservation practices that are not included in NRCS standards. We made no changes based on these comments. Procedures are already in place to evaluate, and where appropriate add new conservation practices. This process is designed to insure that new technologies can be expeditiously

considered and be evaluated for safety and effectiveness.

Commenters asserted that the most pressing local resource concerns should be funded first. We made no changes based on these comments. Although the NRCS uses national criteria for initial eligibility requirements, conservation practices and contracts are developed locally which should address those concerns.

Commenters asserted that the CSP should give producers incentive to pursue sustainable agricultural practices. We made no changes based on these comments. The CSP is designed to address these activities. This is specifically evident in the provisions concerning enrollment categories and enhancements.

Commenters asserted that farmers should have soil sampling done by agricultural professionals to be eligible for CSP. We made no changes based on these comments. NRCS has no requirement as to who analyzes soils samples; but in accordance with the FOTG the soil samples must be analyzed by a creditable entity, *e.g.*, certified professional, soils lab, or university, or by the producer using an accredited field kit.

Commenters asserted that we should specify certain conservation practices to be required for the various Tier levels. We made no changes based on these comments. Tiers are based on resource concerns, rather than practices. There are typically many alternatives available to reaching a resource concern minimum treatment. Because of site specific variations and resource needs, a list of required conservation practices is simply not feasible. However, criteria was added to this rule to address the need for cost-share assistance for specific practices and activities to help producers achieve higher management intensity levels or to advance in tiers of eligibility.

Commenters asserted that farmers who spray fields 2 or 3 times a year should be ineligible for CSP. We made no changes based on these comments. Although activities conducted by producers would affect the ability to meet minimum conservation criteria, the regulations do not exclude producers based on criteria such as the number of sprayings in a time period. NRCS believes it is more appropriate to make eligibility determinations based on the operation's overall conservation management.

#### *Section 1469.9 Technical Assistance*

Some commenters were confused that conservation stewardship plans will be developed by certified conservation

planners and also that technical service providers could work on CSP. NRCS has a program to train and certify conservation planners including technical service providers. This means a farmer could work with a TSP to produce the plan and perform component plan activities if the TSP was a certified planner.

Some were also concerned that NRCS might delegate its approval authority of CSP contracts, plans, or payments to private TSPs. NRCS does not have the authority to provide those delegations.

NRCS is seeking comments on which tasks would be appropriate for approved or certified Technical Service Providers (TSP).

#### *Subpart B—Contracts and Payments*

##### *Section 1469.20 Application for Contracts*

This section is pared back so that it just deals with application requirements. Previously, the description of application requirements was used also to discuss, in essence, eligibility requirements and selection procedures, which have been moved to other sections.

##### *Section 1469.21 Contract Requirements*

One commenter proposed that we delete, “\* \* \* on the violation of a term or condition of the contract;” and replace with, “\* \* \* if the participant fails to correct a violation of a term or contract within 30 days of written notice of such by the NRCS, or upon a second violation of a term or condition of the contract.” NRCS accepted this adjustment in wording which provides a clear timeline and process.

NRCS proposed that as the tier transition occurs, that the contract be at the next tier for a period of no less than 18 months to ensure that the practices are functional and are being managed as an integral part of the agricultural operation. This timeframe has been changed to 12 months. The transition contract will retain the original contract length.

Commenters asserted that the effective date for payments should be the application date. We made no changes based on these comments. By statute, a participant is not eligible for payments until the participant has entered into a contract.

##### *Section 1469.22 Conservation Practice Operation and Maintenance*

One commenter asked to change subsection 1469.23(d), “When NRCS finds that a participant is not operating and maintaining practices installed through CSP in an appropriate manner,

NRCS will request a refund of any associated payments that NRCS made for that practice under the contract” to read, “\* \* \* NRCS will request a refund of any associated payments made for the operation or maintenance for that practice under the contract.” The change is not necessary since NRCS will only be making existing practice payments for practices existing when the application was made. Those payments would be the only type of payment that could be refunded.

Another commenter asked the question, “\* \* \* after a new practice is installed, and a cost-share payment for installation has been made, does the practice become an “existing” practice and eligible for existing practice payments?” No, part of the cost-share obligation for a new practice is to maintain the practice for its performance life, payment is not made for something already required.

Commenters asserted that NRCS should add a requirement that participants annually certify compliance with the key elements of the conservation security plan prior to receipt of payments each year. We made no changes based on these comments, as NRCS already has strict contract quality control procedures in place for all NRCS-related contracts.

Commenters asserted that those participants who are not in compliance should be given the opportunity to come into compliance. We made no changes based on these comments. We do work with participants to retain compliance. However, the interim final rule has language to clarify that if a producer is found to be deficient during the field verification process, they will be granted a reasonable time to correct the problem and come into compliance with the contract.

Commenters asserted that NRCS should allow a participant to go to a lower Tier without adverse consequences. We made no changes based on these comments. NRCS already has authority to take such action if warranted.

Commenters asserted that producers with multiple Tier I contracts should be able to transition to a single Tier II contract. We made no changes based on this comment. This rule allows only one active contract per CSP producer.

##### *Section 1469.23 Program Payments*

Numerous comments were made regarding the clarity of this section. Changes in the stewardship rate methodology, subsection 1469.23(a)(2) were made to clarify the process used and allow some flexibility to make adjustments in the rates as information

becomes available, but which will not affect existing contracts. Subsection 1469.23(a)(3) provides a technical correction in the calculation to assure that land not under the control of the applicant is excluded from the stewardship acreage calculation and the calculation is corrected to include the reduction factor. Subsection 1469.23(a)(4) was added to describe the payment for incidental forest land and parcels specified in 1469.5(d)(1)(iv). Subsection 1469.23(b)(4) was corrected to assure internal consistency. Subsections 1469.23(b)(5) and (6) and (c)(3) were changed to clarify existing and new practice payment intent. Subsections 1469.23(c)(6) simplifies language about how long a new practice must be in place before the participant may advance to a higher tier. Previously, language was arguably phrased as a requirement to keep in a lower tier. This 18 month requirement was changed to 12 months.

A change in subsection 1469.23(d)(5) clarifies the basis on which enhancement payments will be made, moving from cost-effectiveness to the actual cost or expected net environmental benefits. Cost-effectiveness is better used in reference to new practice payments where the participant is required to examine the least cost alternative to fix the conservation problem. In the case of enhancements, the strategy is moving towards an index approach, where in several cases the enhancement is measured on a scale of environmental outcomes as opposed to the completion of tasks. The cost to the government is borne in reimbursing the contract holder a portion or all of the conservation benefits achieved by attaining a higher level of performance. Not all resource concerns have a tested index, but NRCS is developing them for future sign-ups.

Subsection 1469.23(h) was added to clarify that in the event that the annual CSP funding was insufficient to fund the existing contract commitments, the contract payments would be prorated.

#### *Section 1469.24 Contract Modifications and Transfers of Land*

NRCS received comments concerned that the proposed rule is silent on contract renewal. Although adding a subsection was considered, there is no need to repeat direction from the statute.

As with other sections of the regulation, the timeframe for establishing of measures has been adjusted to 12 months, rather than 18 months, based on comments discussed elsewhere in this document.

Commenters asserted that the final rule should address changes that are likely to occur during contract periods. We made no changes based on these comments. The interim final rule adopts provisions from the proposed rule which allow modifications as required.

#### *Section 1469.25 Contract Violations and Termination*

Commenters asserted that there should be no liquidated damages or interest paid for termination of contract. Other commenters asserted that if a contract is terminated early, NRCS should demand refund plus interest and liquidated damages only in cases of fraud, gross negligence or willful failure to carry out mandated conservation practices. NRCS agrees with these comments and adjusted the rule accordingly.

#### *Penalties*

Commenters asserted that NRCS should add stiff penalties for fraud in completing self-assessment. We made no changes based on these comments. Federal law already imposes penalties for such types of fraud (*see e.g.*, 18 U.S.C. 1001).

Commenters asserted that NRCS should allow a participant to terminate a contract without adverse consequences. NRCS agrees with these comments and adjusted the rule accordingly to allow termination by the producer if NRCS determines that all terms and conditions of the contract have been complied with prior to termination.

Commenters asserted that a participant should be able to advance to a higher Tier after 12 months rather than 18 months based on the assertion that this would be compatible with the annual crop cycle. In response, we are making the requested change because the information NRCS needs for determining adequacy of the additional practices can be reviewed within a 12-month period.

Commenters asserted that a producer who would have been eligible for CSP, but for a natural disaster, should be eligible for the amount that would have been paid had the natural disaster not occurred. We made no changes based on these comments. As a general matter, the statutory provisions do not allow for NRCS to waive minimum eligibility requirements for such situations. However, after a contract has been entered, NRCS will work with producers that have suffered natural disasters to allow them to get back into compliance as soon as possible.

#### *Section 1469.31 Appeals*

##### *Appeals*

The proposed rule provides that participants cannot appeal decisions regarding payment rates, payment limits, cost-share percentages, eligible conservation practices, or other matters of general applicability. Commenters asserted that participants should be allowed to obtain review of these non-appealable decisions with NAD making the determinations. We made no changes based on these comments. The appeals process requirements for CSP are consistent with appeals in all other Food Security Act conservation programs and with the statutory provisions for the NAD 7 U.S.C. 6992(d).

Commenters asserted that appeals should be submitted to the State Executive Committee or the Soil and Water Conservation District. We made no changes based on these comments. NRCS administers the CSP and is responsible for appeals of program determinations until review by the NAD.

Proposed § 1469.31 also provides that a participant must exhaust all administrative appeal procedures before seeking judicial review. Commenters asserted that participants should have a choice between administrative review process and courts without being required to exhaust administrative remedies. We made no changes based on these comments. The requirement to exhaust all administrative appeals is set out in the regulation of the NAD, 7 CFR Part 11.13

##### **Executive Order 12866**

Pursuant to Executive Order 12866 (58 FR 51735, October 4, 1993), Regulatory Planning and Review, Natural Resources Conservation Service (NRCS) conducted a benefit/cost analysis of the Conservation Security Program interim rule. A summary of that analysis follows. The alternatives presented in the analysis do not reflect the payment limits used in the interim final rule. Therefore, results reported are illustrative in nature. More precise results will be presented in the benefit cost analysis for the final rule.

*Mechanics of CSP:* The rule states that the Chief, NRCS, will provide a list of structural and land management practices and activities eligible for each CSP payment component. When determining lists of practices and activities and their associated rates, the Chief will consider: (1) Cost and potential conservation benefits of each; (2) effectiveness in treating significant resource concerns; (3) the number of

resource concerns the practice will address; (4) locally available technology; (5) new and emerging conservation technology; and, (6) ability to address the resource concern based on site-specific conditions.

To address unique resource conditions, the Chief may make other conservation practices, measures, and enhancement activities eligible that are not included in the national list. NRCS will make the list of eligible practices and associated cost-share payment rates available. Where new technologies or conservation practices exist, NRCS may approve interim conservation practice standards and financial assistance for work that evaluates performance and effectiveness of the technology or conservation practices.

To encourage producers to enroll, payments may have as many as four components: (1) Base conservation stewardship payment; (2) maintenance payment; (3) new practice cost-share payment; and, (4) enhancement payment.

*The Analytical Model:* Benefits and costs are modeled using a database of 6,105 representative farms reflecting the diversity of farm types and resource conditions of U.S. agriculture. Each farm has multiple CSP participation options based on tier level, resource concerns to be addressed, and portion of the farm to be enrolled (Tier 1 only). Potential payments, costs, on-site benefits and off-site (environmental) benefits are assigned to each participation option for each farm. An expansion factor is associated with each farm to expand results to all U.S. farms.

Modeling of CSP benefits and costs is done through a series of database queries designed to select likely participants and participation options. For eligible watersheds (using a new set of watersheds for each program year in multi-year rotation), farms are selected based on likelihood of CSP participation along with their most likely participation option. Selections are guided by a set of producer decision rules that account for expected net return to participation, demographic data relevant to participation decisions, and participation history of given farm types.

Once participants and their likely participation option are selected, data associated with farms and options are aggregated to produce estimates of key measures of program performance, including environmental benefits, on-site benefits to producers, the cost of installing and maintaining conservation practices, and government expenditures.

*Producer and Social Benefits of CSP:* Environmental benefits arising from

CSP are similar to those available through EQIP and detailed in *Environmental Quality Incentive Program (EQIP) Benefit Cost Analysis, Final Report, May 9, 2003*. Like EQIP, CSP provides payments for installation of new practices to address un-treated resource concerns. However, CSP differs from EQIP in some key aspects. Unlike EQIP, CSP provides payments for maintenance of practices already installed. If maintenance payments for practices are received, it is expected that they will be maintained for full effectiveness for the life of the contract. Therefore, benefits can be derived by delaying loss of practice effectiveness that would be normally expected. CSP also provides for contract "enhancements." Enhancements can fund a number of activities but will focus on increasing conservation practice "management intensity" which consists of actions that expand environmental performance beyond the quality criteria that has been used in NRCS programs.

Only a small proportion of benefits likely to result from CSP can be quantified. This analysis considers three general types of benefits likely obtained through CSP: (1) Quality criteria achieved by installation of practices; (2) exceedance of quality criteria by installation or maintenance of practices with enhancements for increasing "management intensity"; and, (3) maintenance of conservation performance through existing practices (not otherwise covered by a maintenance agreement).

Where new practice benefits can be quantified and credited to CSP, benefit estimates are similar to those used in the EQIP analysis. This analysis, however, uses a great deal more spatial detail available in some more recent benefit studies. In some cases, watershed level benefits estimates are available. In other cases, benefits are estimated for NASS farm production regions.

New practice payments can be made under § 1469.23 of the rule. In limited instances, practices installed that take resource concerns to the quality criteria level can receive cost-sharing under CSP. For example, producers who enter Tier II contracts can receive new practice payments for eligible practices applied that address a third resource concern (in addition to soil and water quality) by the end of the contract. Some portion of benefits likely to flow from application of new practices designed to meet basic, quality criteria can be quantified. Note, however, that in most cases benefits of addressing soil quality and water quality to the quality criteria

level in Tiers I and II and the benefits of addressing all resource concerns to meet quality criteria in Tier III cannot be claimed for CSP because these resource concerns must be addressed prior to CSP enrollment. Thus, environmental benefits associated with soil erosion reduction and nutrient management cannot be attributed to CSP. By extension, wind erosion-related air quality benefits cannot be counted, either because these benefits are largely captured by meeting the quality criteria level for soil quality (which includes reducing erosion to T).

Contract enhancement payments under § 1469.23 of the rule are assumed to account for up to 75 percent of CSP payments. The benefits associated with these enhancement activities are unknown, but a qualitative discussion of them is included in the Benefit Cost analysis. A modest level of benefits is likely to be realized through maintenance of conservation practices. To the extent that cost-sharing of maintenance cost ensures more effective maintenance, practice life may be extended, thus increasing overall environmental benefits. Other potential benefits, although not quantified here, are discussed in Appendix 3 of the CSP Interim Final Rule Benefit Cost Analysis.

#### *Producer and Government Costs of CSP*

Producers must incur certain costs in order to participate in CSP. Following are four costs that a producer may incur, depending on their enrollment tier and amount of land enrolled: (1) Pre-enrollment conservation practice implementation costs; (2) costs associated with the maintenance of existing practices; (3) costs to install new practices; and, (4) costs associated with enhancement activities.

The analysis assumes that some producers must implement practices to enroll. The Interim Final Rule states that producers must address soil and water quality on a portion of their operation for Tier I, soil and water quality on their entire operation for Tier II and all relevant resource concerns on their entire operation for Tier III. Pre-enrollment implementation cost is the cost to the producer to implement structural and management practices needed to address resource concerns and acres that have not already been treated to be eligible to enroll in CSP at a given tier. This cost is used to determine a producer's willingness to participate, but is not included in program related costs in calculating program net benefits.

Existing practice costs are incurred by producers to maintain structural

practices on treated acres. These costs do not include cost to maintain practices that are part of the pre-enrollment implementation cost because these practices may have been installed through another federal program with maintenance required as part of the contract.

New practice installation costs are costs incurred by the producer enrolled in Tier II to address a third resource concern on their operation. These costs apply to both structural and management practices. Producers choosing to move from Tier I to Tier II incur costs to install structural and management practices to achieve the new level. They must address the third resource concern by the end of the contract.

#### *Discussion of Program Alternatives*

NRCS has discretion over several important program parameters that significantly affect program participation and costs. Assumptions used in the alternatives do not reflect the limits used in the interim final rule. Therefore, results reported are illustrative in nature. More precise results will be presented in the benefit cost assessment for the final rule.

#### *Results: Program Net Benefits and Transfer Payments*

Program net benefit is the sum of all CSP-related benefits less all CSP-related costs. CSP-related benefits include both onsite and environmental (offsite) benefits that accrue from practice installation, adoption, and maintenance and payments to producers. Net benefits are only a partial accounting of total benefits, and do not include the benefits attributed to enhancements. CSP-related costs include financial assistance to producers, the cost of practice installation, adoption, and maintenance, and the cost of technical assistance provided to producers. Payments to producers cancel as they are a benefit to producers but a cost to taxpayers. Thus, transfer payments received by producers—payment above CSP-related conservation costs—also cancel out of the net benefit calculation. Note that costs incurred by producers in anticipation of CSP participation (see above “Producer and Government Costs of CSP”) are not counted against CSP payments. If these costs were counted, transfer payments would be lower. On the other hand, the cost of maintaining practices is counted against program payments in calculating the transfer. To the extent producers would maintain practices even without cost-sharing, transfer payments may be underestimated.

Results indicate that the level of cost share has little impact on CSP participation rates. However, stewardship payment rates and participation rates are positively related. Further information on the results of program alternatives can be found in the interim final rule benefit-cost assessment.

#### **Regulatory Flexibility Act**

The Regulatory Flexibility Act is not applicable to this rule because NRCS is not required by 5 U.S.C. 533, or any other provision of law, to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

#### **Small Business Regulatory Enforcement Fairness Act (SBREFA)**

Pursuant to Section 2702 of the Farm Security and Rural Investment Act of 2002 (2002 Farm Bill), the Secretary “shall use the authority provided under section 808(2) of title 5, United States Code.” As required by 5 U.S.C. 808(2), NRCS hereby finds that additional public notice and comment prior to the effective date of this interim final rule are unnecessary and contrary to the public interest. Even though proposed rulemaking was not required for this rulemaking, NRCS published in the **Federal Register** an Advance Notice of Proposed Rulemaking on February 18, 2003 (68 FR 7720), and a Notice of Proposed Rulemaking on January 2, 2004 (69 FR 194). In this interim final rule, NRCS responds to the comments received during the comment period for the proposed rulemaking. Thus, NRCS does not believe that additional public notice through 5 U.S.C. 808(1) is necessary prior to the effective date of this interim final rule, even though the agency has provided for an additional comment period. Additionally, Congress authorized \$41.443 million to be available to implement CSP in FY 2004. NRCS needs to obligate these funds by September 30, 2004, in order for them to be available for payment to CSP program participants. To ensure that NRCS has the regulatory framework in place for the FY 2004 sign-up, NRCS determines that it is in the public interest for this interim rule to be in effect upon its publication in the **Federal Register**.

#### **Environmental Analysis**

A final Environmental Assessment (EA) has been prepared to assist in determining whether this interim final rule, if implemented, would have a significant impact on the quality of the human environment. Based on the results of the final EA, NRCS issued a Finding of No Significant Adverse

Impact (FONSI) on May 25, 2004. Copies of the final EA and FONSI may be obtained from Thomas Christensen, Director, Financial Assistance Programs Division, Natural Resources Conservation Service, Room 5241-S, Washington, DC 20250-2890, and electronically at <http://www.nrcs.usda.gov/programs/csp/index.html> under “Program Information”.

#### **Paperwork Reduction Act**

Section 2702 of the Farm Security and Rural Investment Act of 2002 requires that the implementation of this provision be carried out without regard to the Paperwork Reduction Act, Chapter 35 of title 44, United States Code. Therefore, NRCS is not reporting recordkeeping or estimated paperwork burden associated with this interim final rule.

#### **Government Paperwork Elimination Act**

NRCS is committed to compliance with the Government Paperwork Elimination Act, which requires Government agencies, in general, to provide the public the option of submitting information or transacting business electronically to the maximum extent possible. To better accommodate public access, NRCS is proposing to develop an online application and information system for public use.

#### **Executive Order 12988**

This interim final rule has been reviewed in accordance with Executive Order 12988, Civil Justice Reform. The provisions of this interim final rule are not retroactive. The provisions of this interim final rule preempt State and local laws to the extent that such laws are inconsistent with this interim final rule. Before an action may be brought in a Federal court of competent jurisdiction, the administrative appeal rights afforded persons at 7 CFR parts 614, 780, and 11 must be exhausted.

#### **Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994**

Pursuant to section 304 of the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (Pub. L. 103-354), USDA classified this rule as major and NRCS conducted a risk assessment. The risk assessment examined environmental degradation of soil, water and air quality, water quantity, and plant and wildlife habitat in absence of the program. The risk assessment is available upon request from Thomas Christensen, Director, Financial Assistance Programs Division,

Natural Resources Conservation Service, P.O. Box 2890, Washington, DC 20013–2890, and electronically at <http://www.nrcs.usda.gov/programs/csp/index.html> under “Program Information”.

### Unfunded Mandates Reform Act of 1995

NRCS assessed the effects of this rulemaking action on State, local, and tribal governments, and the public. This action does not compel the expenditure of \$100 million or more by any State, local, or tribal governments, or anyone in the private sector; therefore, a statement under section 202 of the Unfunded Mandates Reform Act of 1995 is not required.

### List of Subjects in 7 CFR Part 1469

Agricultural operations, Conservation practices, Conservation stewardship contract, Conservation stewardship plan, Plant and animal management, Soil and water conservation, Soil quality, Water and air quality.

■ Accordingly, title 7, chapter XIV of the Code of Federal Regulations is amended by adding a new part 1469 to read as follows:

## PART 1469—CONSERVATION SECURITY PROGRAM

### Subpart A—General Provisions

- Sec.
- 1469.1 Applicability.
  - 1469.2 Administration.
  - 1469.3 Definitions.
  - 1469.4 Significant resource concerns.
  - 1469.5 Eligibility requirements.
  - 1469.6 Enrollment criteria and selection process.
  - 1469.7 Benchmark condition inventory and conservation stewardship plan.
  - 1469.8 Conservation practices and activities.
  - 1469.9 Technical assistance.

### Subpart B—Contracts and Payments

- 1469.20 Application for contracts.
- 1469.21 Contract requirements.
- 1469.22 Conservation practice operation and maintenance.
- 1469.23 Program payments.
- 1469.24 Contract modifications and transfers of land.
- 1469.25 Contract violations and termination.

### Subpart C—General Administration

- 1469.30 Fair treatment of tenants and sharecroppers.
- 1469.31 Appeals.
- 1469.32 Compliance with regulatory measures.
- 1469.33 Access to agricultural operation.
- 1469.34 Performance based on advice or action of representatives of NRCS.
- 1469.35 Offsets and assignments.
- 1469.36 Misrepresentation and scheme or device.

Authority: 16 U.S.C. 3830 *et seq.*

## Subpart A—General Provisions

### § 1469.1 Applicability.

(a) This part sets forth the policies, procedures, and requirements for the Conservation Security Program (CSP) as administered by the Natural Resources Conservation Service (NRCS) for enrollment during calendar year 2004 and thereafter.

(b) CSP is applicable only on privately owned or Tribal lands in any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands of the United States, American Samoa, and the Commonwealth of the Northern Mariana Islands.

(c) Through the CSP the Commodity Credit Corporation (CCC), by and through the NRCS, provides financial assistance and technical assistance to participants for the conservation, protection, and improvement of soil, water, and other related resources, and for any similar conservation purpose as determined by the Secretary.

### § 1469.2 Administration.

(a) The regulations in this part will be administered under the general supervision and direction of the Chief, Natural Resources Conservation Service (NRCS), who is a Vice President of the CCC.

(b) The Chief may modify or waive a provision of this part if the Chief determines that the application of such provision to a particular limited situation is inappropriate and inconsistent with the goals of the program.

(c) The Chief determines fund availability to provide financial and technical assistance to participants according to the purpose and projected cost of contracts in a fiscal year. The Chief allocates the funds available to carry out CSP to the NRCS State Conservationist. Contract obligations will not exceed the funding available to the Agency.

(d) The State Conservationist may obtain advice from the State Technical Committee and local workgroups on the development of State program technical policies, payment related matters, outreach efforts, and other program issues.

(e) NRCS may enter into agreements with Federal agencies, State and local agencies, conservation districts, Tribes, private entities, and individuals to assist NRCS with educational efforts, outreach efforts, and program implementation assistance.

(f) For lands under the jurisdiction of a Tribe or Tribal Nation, certain items

identified in paragraph (d) of this section may be determined by the Tribe or Tribal Nation and the NRCS Chief.

### § 1469.3 Definitions.

The following definitions apply to this part and all documents issued in accordance with this part, unless specified otherwise:

*Activity* means an action other than a conservation practice that is included as a part of a conservation stewardship contract; such as a measure, incremental movement on a conservation index or scale, or an on-farm demonstration, pilot, or assessment.

*Agricultural land* means cropland, rangeland, pastureland, hayland, private non-industrial forest land if it is an incidental part of the agricultural operation, and other land on which food, fiber, and other agricultural products are produced. Areas used for strip-cropping or alley-cropping and silvopasture practices will be included as agricultural land.

*Agricultural operation* means all agricultural land and other lands determined by the Chief, whether contiguous or noncontiguous, under the control of the participant and constituting a cohesive management unit, that is operated with equipment, labor, accounting system, and management that is substantially separate from any other. The minimum size of an agricultural operation is a field.

*Applicant* means a producer as defined in this rule who has requested in writing to participate in CSP.

*Beginning farmer or rancher* means an individual or entity who:

(1) Has not operated a farm or ranch, or who has operated a farm or ranch for not more than 10 consecutive years, as defined in (7 U.S.C. 1991(a)). This requirement applies to all members of an entity; and

(2) Will materially and substantially participate in the operation of the farm or ranch.

(i) In the case of a contract with an individual, solely, or with the immediate family, material and substantial participation requires that the individual provide substantial day-to-day labor and management of the farm or ranch, consistent with the practices in the county or State where the farm is located.

(ii) In the case of a contract with an entity, all members must materially and substantially participate in the operation of the farm or ranch. Material and substantial participation requires that each of the members provide some amount of the management, or labor and management necessary for day-to-day

activities, such that if each of the members did not provide these inputs, operation of the farm or ranch would be seriously impaired.

**Benchmark condition inventory** means the documentation of the resource condition or situation pursuant to § 1469.7(a) that NRCS uses to measure an applicant's existing level of conservation activities in order to determine program eligibility, to design a conservation stewardship contract, and to measure the change in resource conditions resulting from conservation treatment.

**Certified Conservation Planner** means an individual certified by NRCS who possesses the necessary skills, training, and experience to implement the NRCS nine-step planning process to meet client objectives in solving natural resource problems. The certified conservation planner has demonstrated skill in assisting producers to identify resource problems, to express the client's objectives, to propose feasible solutions to resource problems, and assists the producers select and implement an effective alternative that treats resource concerns and consistent with client's objectives.

**Chief** means the Chief of NRCS, USDA or designee.

**Conservation district** means any district or unit of State or local government formed under State, territorial, or tribal law for the express purpose of developing and carrying out a local soil and water conservation program. Such a district or unit of government may be referred to as a "conservation district," "soil conservation district," "soil and water conservation district," "resource conservation district," "land conservation committee," or similar name.

**Conservation practice** means a specified treatment, such as a structural or land management practice, that is planned and applied according to NRCS standards and specifications.

**Conservation Reserve Program (CRP)** means the Commodity Credit Corporation program administered by the Farm Service Agency pursuant to 16 U.S.C. 3831–3836.

**Conservation stewardship contract** means a legal document that specifies the rights and obligations of any participant who has been accepted to receive assistance through participation in CSP.

**Conservation stewardship plan** means the conservation planning document that builds on the inventory of the benchmark condition documenting the conservation practices currently being applied; those practices needing to be

maintained; and those practices, treatments, or activities to be supported under the provisions of the conservation stewardship contract.

**Conservation system** means a combination of conservation practices, measures and treatments for the treatment of soil, water, air, plant, or animal resource concerns.

**Conservation treatment** means any and all conservation practices, measures, and works of improvement that have the purpose of alleviating resource concerns, solving or reducing the severity of natural resource use problems, or taking advantage of resource opportunities.

**Considered to be planted** means a long term rotation of alfalfa or multi-year grasses and legumes; summer fallow; typically cropped wet areas, such as rice fields, rotated to wildlife habitat; or crops planted to provide an adequate seedbed for re-seeding.

**Cropland** means a land cover/use category that includes areas used for the production of adapted crops for harvest, including but not limited to land in row crops or close-grown crops, forage crops that are in a rotation with row or close-grown crops, permanent hayland, horticultural cropland, orchards, and vineyards.

**Designated conservationist** means an NRCS employee whom the State Conservationist has designated as responsible for administration of CSP in a specific area.

**Enhancement payment** means CSP payments available to all tiers as described in § 1469.23(d).

**Enrollment categories** means a classification system used to sort out applications for payment. The enrollment category mechanism will create distinct classes for funding defined by resource concerns, levels of treatment, and willingness to achieve additional environmental performance.

**Existing practice component of CSP payments** means the component of a CSP payment as described in § 1469.23(b).

**Field** means a part of an agricultural operation which is separated from the balance of the agricultural operation by permanent boundaries, such as fences, permanent waterways, woodlands, and crop lines in cases where farming practices make it probable that such cropland is not subject to change, or other similar features.

**Field Office Technical Guide (FOTG)** means the official local NRCS source of resource information and the interpretations of guidelines, criteria, and standards for planning and applying conservation treatments and conservation management systems. It

contains detailed information on the conservation of soil, water, air, plant, and animal resources applicable to the local area for which it is prepared. Guides can be reviewed at the local USDA Service Center or online at <http://www.nrcs.usda.gov/technical/efotg/>.

**Forage and animal balance** means that the total amount of available grazing forage and the addition of any roughage supply (hay, silage, or green chop) is balanced with the amount consumed by the total number of livestock and wildlife to meet their daily consumption needs.

**Forest land** means a land cover/use category that is at least 10 percent stocked by single-stemmed woody species of any size that will be at least 4 meters (13 feet) tall at maturity. Also included is land bearing evidence of natural regeneration of tree cover (cut over forest or abandoned farmland) that is not currently developed for nonforest use. Ten percent stocked, when viewed from a vertical direction, equates to an aerial canopy cover of leaves and branches of 25 percent or greater. The minimum area for classification as forest land is 1 acre, and the area must be at least 100 feet wide.

**Incidental forest land** means forested land that includes all nonlinear forested riparian areas (*i.e.*, bottomland forests), and small associated woodlots located within the bounds of working agricultural land or small adjacent areas and that are managed to maximize wildlife habitat values and are within the NRCS FOTG standards for a wildlife practice. However, silvopasture that meets NRCS practice standard will be considered as pasture or range land and not incidental forestland since silvopasture is one type of intense grazing system. Areas of incidental forest land that are not part of a linear conservation practice are limited individually in size to 10 acres or less and limited to 10 percent in congregate of the total offered acres.

**Indian tribe** means any Indian Tribe, band, Nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*) that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

**Indian trust lands** means real property in which:

(1) The United States holds title as trustee for an Indian or Tribal beneficiary; or

(2) An Indian or Tribal beneficiary holds title and the United States maintains a trust relationship.

*Joint operation* means a general partnership, joint venture, or other similar business arrangement as defined in 7 CFR 718.2.

*Land cover/use* means a term that includes categories of land cover and categories of land use. Land cover is the vegetation or other kind of material that covers the land surface. Land use is the purpose of human activity on the land; it is usually, but not always, related to land cover. The National Resources Inventory uses the term land cover/use to identify categories that account for all the surface area of the United States.

*Land management practice* means conservation practices that primarily use site-specific management techniques and methods to conserve, protect from degradation, or improve soil, water, air, or related natural resources in the most cost-effective manner. Land management practices include, but are not limited to, nutrient management, manure management, integrated pest management, integrated crop management, resource conserving crop rotations, irrigation water management, tillage or residue management, stripcropping, contour farming, grazing management, and wildlife habitat management.

*Limited resource producer* means a producer:

(1) With direct or indirect gross farm sales not more than \$100,000 in each of the previous two years (to be increased starting in FY 2004 to adjust for inflation using Prices Paid by Farmer Index as compiled by National Agricultural Statistical Service (NASS); and

(2) Who has a total household income at or below the national poverty level for a family of four, or less than 50 percent of county median household income in each of the previous 2 years (to be determined annually using Commerce Department Data).

*Liquidated damages* means a sum of money stipulated in the CSP contract which the participant agrees to pay NRCS if the participant fails to adequately complete the contract. The sum represents an estimate of the anticipated or actual harm caused by the failure, and reflects the difficulties of proof of loss and the inconvenience or non-feasibility of otherwise obtaining an adequate remedy.

*Local work group* means representatives of local offices of FSA, the Cooperative State Research, Education, and Extension Service, the conservation district, and other Federal, State, and local government agencies,

including Tribes, with expertise in natural resources who advise NRCS on decisions related to implementation of USDA conservation programs.

*Maintenance* means work performed by the participant to keep the applied conservation practice functioning for the intended purpose during its life span. Maintenance includes work to prevent deterioration of the practice, repairing damage, or replacement of the practice to its original condition if one or more components fail.

*Management intensity* means the degree and scope of practices or measures taken by a producer which are beyond the quality criteria for a given resource concern or beyond the minimum requirements of a management practice, and which may qualify as additional effort necessary to receive an enhancement payment.

*Measure* means one or more specific actions that is not a conservation practice, but has the effect of alleviating problems or improving the treatment of the resources.

*Minimum level of treatment* means the specific conservation treatment NRCS requires that addresses a resource concern to a level that meets or exceeds the quality criteria according to NRCS technical guides or the minimum tier requirements to address resource concerns as defined in 1469.5(e).

*Nationally significant resource concerns* means the significant resource concerns identified by NRCS in this rule and in the sign-up notice as basic program eligibility requirements.

*New practice payment* means the payment as described in 1469.23(c).

*Operator* means an individual, entity, or joint operation who is in general control of the farming operations on the farm at the time of application.

*Participant* means a producer who is accepted into CSP and has signed a CSP contract.

*Pastured cropland* means a land cover/use category that includes areas used for the production of pasture in grass-based livestock production systems that could support adapted crops for harvest, including but not limited to land in row crops or close-grown crops, and forage crops that are in a rotation with row or close-grown crops. Pastured cropland will receive the same stewardship payment as cropland.

*Pastureland* means a land cover/use category of land managed primarily for the production of introduced forage plants for grazing animals and includes improved pasture. Pastureland cover may consist of a single species in a pure stand, a grass mixture, or a grass-legume mixture. Management usually consists

of cultural treatments: fertilization, weed control, reseeding or renovation, and control of grazing.

*Practice life span* means the time period in which the conservation practices are to be used and maintained for their intended purposes as defined by NRCS technical references.

*Priority resource concern* means nationally significant resource concerns and local resource concerns, approved by the Chief, for which enhancement payments will be available.

*Producer* means an owner, operator, landlord, tenant, or sharecropper who shares in the risk of producing any crop or livestock; and is entitled to share in the crop or livestock available for marketing from a farm (or would have shared had the crop or livestock been produced).

*Quality criteria* means the minimally acceptable level of treatment as defined in the technical guide of NRCS, required to achieve a resource management system for identified resource considerations for a particular land use.

*Rangeland* means a land cover/use category on which the climax or potential plant cover is composed principally of native grasses, grasslike plants, forbs, or shrubs suitable for grazing and browsing, and introduced forage species that are managed like rangeland. This term would include areas where introduced hardy and persistent grasses, such as crested wheatgrass, are planted and such practices as deferred grazing, burning, chaining, and rotational grazing are used, with little or no chemicals or fertilizer being applied. Grasslands, savannas, prairie, many wetlands, some deserts, and tundra are considered to be rangeland. Certain communities of low forbs and shrubs, such as mesquite, chaparral, mountain shrub, and pinyon-juniper, are also included as rangeland.

*Resource concern* means the condition of natural resources that may be sensitive to change by natural forces or human activity. Resource concerns include the resource considerations listed in Section III of the FOTG, such as soil erosion, soil condition, soil deposition, water quality, water quantity, animal habitat, air quality, air condition, plant suitability, plant condition, plant management, and animal habitat and management.

*Resource-conserving crop rotation* means a crop rotation that reduces erosion, maintains or improves soil fertility and tilth, interrupts pest cycles, or conserves soil moisture and water and that includes at least one resource-conserving crop, such as a perennial grass, a legume grown for use as forage, seed for planting, or green manure, a

legume-grass mixture, a small grain grown in combination with a grass or legume, whether inter-seeded or planted in rotation.

*Resource management system* means a system of conservation practices and management relating to land or water use that is designed to prevent resource degradation and permit sustained use of land, water, and other natural resources, as defined in accordance with the technical guide of the Natural Resources Conservation Service.

*Secretary* means the Secretary of the U.S. Department of Agriculture.

*Sharecropper* means an individual who performs work in connection with the production of the crop under the supervision of the operator and who receives a share of such crop in return for the provision of such labor.

*Sign-up notice* means the public notification document that NRCS provides to describe the particular requirements for a specific CSP sign-up.

*Significant resource concerns* means the list of resource concerns, identified by NRCS, associated with an agricultural operation that is subject to applicable requirements under CSP, such as the additional Tier II contract requirement.

*Soil quality* means resource concerns and/or opportunities related to depletion of soil organic matter content through soil disturbance or by sheet, rill, and wind erosion, and the physical condition of the soil relative to ease of tillage, fitness as a seedbed, the impedance to seedling emergence or root penetration, salinity, and overall soil productivity.

*State Conservationist* means the NRCS employee authorized to direct and supervise NRCS activities within a specified State, the Pacific Basin, or the Caribbean Area.

*State Technical Committee* means a committee established by the Secretary in a State pursuant to 16 U.S.C. 3861.

*Stewardship payment* means the CSP base payment component of the payment as described in 1469.23(a).

*Structural practice* means a land-based conservation practice, including vegetative practices, that involves establishing, constructing, or installing a site-specific measure to conserve, protect from degradation, or improve soil, water, air, or related natural resources in the most cost-effective manner. Examples include, but are not limited to, terraces, grassed waterways, tailwater pits, livestock water developments, contour grass strips, filterstrips, critical area plantings, tree planting, wildlife habitat, and capping of abandoned wells.

*Technical assistance* means the activities as defined in 7 CFR part 1466.

*Technical Service Provider* means an individual, private-sector entity, or public agency certified or approved by NRCS to provide technical services through NRCS or directly to program participants, as defined in 7 CFR part 652.

*Tenant* means one who rents land from another in consideration of the payment of a specified amount of cash or amount of a commodity; or one (other than a sharecropper) who rents land in consideration of the payment of a share of the crops or proceeds therefrom.

*Tier* means one of the three levels of participation in CSP.

*Water quality* means resource concerns or opportunities, including concerns such as excessive nutrients, pesticides, sediment, contaminants, pathogens and turbidity in surface waters, and excessive nutrients and pesticides in ground waters, and any other concerns identified by state water quality agencies.

*Watershed or regional resource conservation plan* means a plan developed for a watershed or other geographical area defined by the stakeholders. The plan addresses identified resource problems, contains alternative solutions that meet the stakeholder objectives for each resource, and addresses applicable laws and regulations as defined in the NRCS National Planning Procedures Handbook.

*Wetlands Reserve Program (WRP)* means the Commodity Credit Corporation program administered by the Natural Resources Conservation Service pursuant to 16 U.S.C. 3837–3837f.

#### **§ 1469.4 Significant resource concerns.**

(a) Soil quality and water quality are nationally significant resource concerns for all land uses.

(b) For each sign-up, the Chief may determine additional nationally significant resource concerns for all land uses. Such significant resource concerns will reflect pressing conservation needs and emphasize off-site environmental benefits. In addition, the Chief may approve other priority resource concerns for which enhancement payments will be offered for specific locations and land uses.

#### **§ 1469.5 Eligibility requirements.**

(a) In general—To be eligible to participate in CSP:

(1) Applicants must meet the requirements for eligible applicants, including any additional eligibility criteria and contract requirements that

may be included in a CSP sign-up notice pursuant to § 1469.6(c);

(2) Land must meet the definition of eligible land; and

(3) The application must meet the conservation standards established pursuant to this section.

(b) Applicants may submit only one application for each sign-up. Producers who have an active CSP contract are not eligible to submit another application.

(c) Eligible applicants. To be eligible to participate, an applicant must—

(1) Be in compliance with the highly erodible land and wetland conservation provisions found in 7 CFR part 12;

(2) Have control of the land for the life of the proposed contract period.

(i) The Chief may make an exception for land allotted by the Bureau of Indian Affairs (BIA), tribal land, or other instances in which the Chief determines that there is sufficient assurance of control; and

(ii) If the applicant is a tenant, the applicant must provide NRCS with the written evidence or assurance of control from the landowner.

(3) Share in risk of producing any crop or livestock and be entitled to share in the crop or livestock available for marketing from the agricultural operation (landlords and owners are ineligible to submit an application for exclusively cash rented agricultural operations).

(4) Complete a benchmark condition inventory for the entire agricultural operation or the portion being enrolled in accordance with § 1469.7(a);

(5) Supply information, as required by NRCS, to determine eligibility for the program; including but not limited to information related to eligibility criteria in the sign-up notice; and information to verify the applicant's status as a beginning farmer or rancher;

(d) Eligible land. (1) To be eligible for enrollment in CSP, land must be:

(i) Private agricultural land;

(ii) Private non-industrial forested land that is an incidental part of the agricultural operation;

(iii) Agricultural land that is Tribal, allotted, or Indian trust land;

(iv) Other incidental parcels, as determined by NRCS, which may include, but are not limited to, land within the bounds of working agricultural land or small adjacent areas (such as center pivot corners, field borders, linear practices, incidental forest land, turn rows, intermingled small wet areas or riparian areas); or

(v) Other land on which NRCS determines that conservation treatment will contribute to an improvement in an identified natural resource concern, including areas outside the boundary of

the agricultural operation such as farmsteads, ranch sites, barnyards, feedlots, equipment storage areas, material handling facilities, and other such developed areas. Other land must be treated in Tier III contracts; and

(vi) A majority of the agricultural operation must be within a watershed selected for sign-up.

(2) The following land is not eligible for enrollment in CSP:

(i) Land enrolled in the Conservation Reserve Program;

(ii) Land enrolled in the Wetlands Reserve Program;

(iii) Land enrolled in the Grassland Reserve Program pursuant to 16 U.S.C. 3838n;

(iv) Public land including land owned by a Federal, State or local unit of government;

(v) Land referred to in paragraphs (d)(2)(i), (ii), (iii), and (iv) of this section may not receive CSP payments, but the conservation work on this land may be used to determine if an applicant meets eligibility criteria for the agricultural operation and may be described in the Conservation Stewardship Plan.

(3) The following land is not eligible for any payment component in CSP: Land that is used for crop production after May 13, 2002, that had not been planted, considered to be planted, or devoted to crop production, as determined by NRCS, for at least 4 of the 6 years preceding May 13, 2002.

(4) Delineation of the agricultural operation.

(i) The applicant will delineate the agricultural operation to include all agricultural lands, other incidental parcels identified in paragraph (1)(d)(iv) of this section, and other lands, identified in paragraph (1)(d)(v) of this section under the control of the participant and constituting a cohesive management unit, and is operated with equipment, labor, accounting system, and management that is substantially separate from any other land.

(ii) In delineating the agricultural operation, USDA farm boundaries may be used. If farm boundaries are used in the application, the entire farm area must be included within the delineation. An applicant may offer one farm or aggregate farms into one agricultural operation and any other additional eligible land not within a farm boundary.

(e) Conservation standards. (1) Minimum tier eligibility requirements:

(i) An applicant is eligible to participate in CSP Tier I only if the benchmark condition inventory demonstrates to the satisfaction of NRCS that the applicant has addressed the nationally significant resource concerns

of Water Quality and Soil Quality to the minimum level of treatment as specified in paragraphs (e)(2) and (3) of this section on part of the agricultural operation. Only the acreage meeting such requirements is eligible for stewardship and existing practice payments in CSP.

(ii) An applicant is eligible to participate in CSP Tier II only if the benchmark condition inventory demonstrates to the satisfaction of NRCS that the applicant has addressed the nationally significant resource concerns of water quality and soil quality to the minimum level of treatment as specified in paragraphs (e)(2) and (3) of this section for all land uses on the entire agricultural operation. Under Tier II, the entire agricultural operation must be enrolled in CSP.

(iii) An applicant is eligible to participate in CSP Tier III only if the benchmark condition inventory demonstrates to the satisfaction of NRCS that the applicant has addressed all of the applicable resource concerns to the minimum level of treatment as specified in paragraph (e)(4) of this section on the entire agricultural operation. Practices or activities shall not be required for participation in the program unless they would have an ultimate conservation benefit as demonstrated by the Conservation Practice Physical Effects matrix in the FOTG. Under Tier III, the entire agricultural operation is enrolled in CSP including other land as defined in § 1469.5(d)(1)(v).

(2) The minimum level of treatment on cropland for Tier I and Tier II:

(i) The minimum level of treatment for soil quality on cropland is considered achieved when the Soil Conditioning Index value is positive;

(ii) The minimum level of treatment for water quality on cropland is considered achieved if the benchmark inventory indicates that the current level of treatment meets or exceeds the quality criteria according to the NRCS technical guides for these specific resource considerations: nutrients, pesticides, salinity and sediment for surface waters and nutrients, pesticides, and salinity for groundwater.

(3) The minimum level of treatment on pastureland and rangelands for Tier I and Tier II is vegetation and animal management accomplished by following a grazing management plan that provides a forage-animal balance, proper livestock distribution, and timing of use and managing livestock access to water courses.

(4) The minimum level of treatment for Tier III.

(i) The minimum level of treatment for Tier III is meeting the quality criteria

for the local NRCS FOTG for all existing resource concerns and considerations with the following exceptions:

(A) The minimum requirement for soil quality on cropland is considered achieved when the Soil Conditioning Index value is positive; and

(B) The minimum requirement for water quantity—irrigation water management on cropland or pastureland is considered achieved when the current level of treatment and management for the system results in a water use efficiency value of at least 50%.

(C) The minimum requirement for wildlife is considered achieved when the current level of treatment and management for the system results in a value of at least 0.5.

(5) In the instance of a significant natural event, such as drought, wildfire, pestilence, or flooding which would prevent the participant or applicant from achieving the minimum requirements, those requirements will be considered met so long as the participant or applicant can provide documentation of their stewardship prior to such an event.

#### **§ 1469.6 Enrollment criteria and selection process.**

(a) Selection and funding of priority watersheds. (1) NRCS will prioritize watersheds based on a nationally consistent process using existing natural resource, environmental quality, and agricultural activity data along with other information that may be necessary to efficiently operate the program. The watershed prioritization and identification process will consider several factors, including but not limited to:

(i) Potential of surface and ground water quality to degradation;

(ii) Potential of soil to degradation;

(iii) Potential of grazing land to degradation;

(iv) State or national conservation and environmental issues *e.g.* location of air non-attainment zones or important wildlife/fisheries habitat; and

(v) Local availability of management tools needed to more efficiently operate the program, such as digital soils information.

(2) Priority watersheds selected, in which producers would be potentially eligible for enrollment, will be announced in the sign-up notice.

(b) Enrollment categories. The Chief may limit new program enrollments in any fiscal year to enrollment categories designed to focus on priority conservation concerns and enhancement measures. NRCS will utilize enrollment categories to determine which contracts will be funded in a given sign-up.

(1) Enrollment categories will be defined by criteria related to resource concerns and levels of historic conservation treatment, and the producer's willingness to achieve additional environmental performance or conduct enhancement activities.

(2) All applications which meet the sign-up criteria within the priority watersheds will be placed in an enrollment category regardless of available funding.

(3) NRCS will develop subcategories within each enrollment category and include them in the sign-up notice. The development of subcategories may consider several factors, including:

(i) Willingness of the applicant to participate in local conservation enhancement activities;

(ii) Targeting program participation for Limited Resource Producers;

(iii) Targeting program participation to water quality priority areas for nutrient or pest management;

(iv) Targeting program participation for locally important wildlife/fisheries habitat creation and protection; and

(v) Other priorities as determined by the Secretary.

(4) At the beginning of each sign-up, the Chief will announce the order in which categories and subcategories are eligible to be funded.

(5) All eligible applications will be placed in the highest priority enrollment category and sub-category for which the application qualifies.

(6) Enrollment categories and subcategories will be funded in priority order until the available funds specified in the CSP sign-up notice are exhausted.

(c) Sign-up process. (1) NRCS will publish a CSP sign-up notice with sufficient time for producers to consider the benefits of participation prior to the opening of the sign-up period. In the public sign-up notice, the Chief will announce and explain the rationale for decisions for the following information:

(i) Any additional program eligibility criteria that are not listed in § 1469.5;

(ii) Any additional nationally significant resource concerns that are not listed in § 1469.4(a) that will apply;

(iii) Any additional requirements that participants must include in their CSP applications and contracts that are not listed in § 1469.21;

(iv) Information on the priority order of enrollment categories and subcategories for funding contracts;

(v) Specific information on the level of funding that NRCS estimates will go toward stewardship, existing practice, and enhancement payments;

(vi) An estimate of the total funds NRCS expects to obligate under new contracts during a given sign-up, and an

estimate for the number of enrollment categories and contracts NRCS expects to be able to fund; and

(vii) The schedule for the sign-up process, including the deadline(s) for applying.

(2) NRCS will accept applications according to the timeframes specified in the sign-up notice.

(d) Selection of contracts. (1) NRCS will determine whether the application meets the eligibility criteria, and will place applications into an enrollment category based on the criteria specified in the sign-up notice. Enrollment categories will be funded in the order designated in the sign-up notice until the available funding is exhausted. NRCS will determine the number of categories that can be funded in accordance with the sign-up notice, and will inform the applicant of its determinations. NRCS will determine in which Tier the participant is eligible to participate, and will notify applicants of the determination.

(2) NRCS will develop a conservation stewardship contract for the selected applications. If the contract falls within the group of contracts funded in the given sign-up, NRCS will make payments as described in the contract in return for their implementation and/or maintenance of a specified level of conservation treatment on all or part of the agricultural operation.

#### **§ 1469.7 Benchmark condition inventory and conservation stewardship plan.**

(a) The benchmark condition inventory must include:

(1) A map, aerial photograph, or overlay that delineates the entire agricultural operation, including land use and acreage.

(2) A description of the applicant's production system(s) on the agricultural operation to be enrolled;

(3) The existing conservation practices and resource concerns, problems, and opportunities on the operation.

(4) Other information needed to document existing conservation treatment and activities, such as, grazing management, nutrient management, pest management, and irrigation water management plans; and

(5) A description of the significant resource concerns and other resource concerns that the applicant is willing to address in their contract through the adoption of new conservation practices and measures.

(6) A list of enhancements that the producer may be willing to undertake as part of their contract.

(b) Conservation stewardship plan. (1) The conservation stewardship plan must include:

(i) To the extent practicable, a quantitative and qualitative description of the conservation and environmental benefits that the conservation stewardship contract will achieve;

(ii) A plan map showing the acreage to be enrolled in CSP;

(iii) A verified benchmark condition inventory as described in § 1469.7(a);

(iv) A description of the significant resource concerns and other resource concerns to be addressed in the contract through the adoption of new conservation measures;

(v) A description and implementation schedule of:

(A) Individual conservation practices and measures to be maintained during the contract, consistent with the requirements for the tier(s) of participation and the relevant resource concerns and with the requirements of the sign-up;

(B) Individual conservation practices and measures to be installed during the contract, consistent with the requirements for the tier(s) of participation and the relevant resource concerns;

(C) Eligible enhancement activities as selected by the participant and approved by NRCS; and

(D) A schedule for transitioning to higher tier(s) of participation, if applicable;

(vi) A description of the conservation activities that are required for a participant to transition to a higher tier of participation;

(vii) Information that will enable evaluation of the effectiveness of the plan in achieving its environmental objectives; and

(viii) Other information determined appropriate by NRCS and described to the applicant.

(3) The conservation stewardship plan may be developed with assistance from NRCS or NRCS-certified Technical Service Providers.

(4) All additional conservation practices in the conservation stewardship plan for which new practice payments will be provided must be carried out in accordance with the applicable NRCS FOTG.

#### **§ 1469.8 Conservation practices and activities.**

(a) Conservation practice and activity selection. (1) The Chief will provide a list of structural and land management practices and activities eligible for each CSP payment component. If the Chief's designee provides the list, it will be approved by the Director of the Financial Assistance Division of NRCS. When determining the lists of practices and activities and their associated rates, the Chief will consider:

(i) The cost and potential conservation benefits;

(ii) The degree of treatment of significant resource concerns;

(iii) The number of resource concerns the practice or activity will address;

(iv) Locally available technology;

(v) New and emerging conservation technology;

(vi) Ability to address the resource concern based on site specific conditions; and,

(vii) The need for cost-share assistance for specific practices and activities to help producers achieve higher management intensity levels or to advance in tiers of eligibility.

(2) To address unique resource conditions in a State or region, the Chief may make additional conservation practices, measures, and enhancement activities eligible that are not included in the national list of eligible CSP practices.

(3) NRCS will make the list of eligible practices and activities and their individual payment rates available to the public.

(b) NRCS will consider the qualified practices and activities in its computation of CSP payments except for provided for in paragraph (d) of this section.

(c) NRCS will not make new practice payments for a conservation practice the producer has applied prior to application for the program.

(d) New practice payments will not be made to a participant who has implemented or initiated the implementation of a conservation practice prior to approval of the contract, unless a waiver was granted by the State Conservationist or the Designated Conservationist prior to the installation of the practice.

(e) Where new technologies or conservation practices that show high potential for optimizing environmental benefits are available, NRCS may approve interim conservation practice standards and financial assistance for pilot work to evaluate and assess the performance, efficacy, and effectiveness of the technology or conservation practices.

(f) NRCS will set the minimum level of treatment within land management practices at the national level; however, the State Conservationist may supplement specific criteria to meet localized conditions within the State or areas.

#### **§ 1469.9 Technical assistance.**

(a) NRCS may use the services of NRCS-approved or certified Technical Service Providers in performing its responsibilities for technical assistance.

(b) Technical assistance may include, but is not limited to: assisting applicants during sign-up, processing and assessing applications, assisting the participant in developing the conservation stewardship plan; conservation practice survey, layout, design, installation, and certification; information, education, and training for producers; and quality assurance activities.

(c) NRCS retains approval authority over the certification of technical assistance done by non-NRCS personnel.

(d) NRCS retains approval authority of the CSP contracts and contract payments.

(e) Conservation stewardship plans will be developed by NRCS certified conservation planners.

### **Subpart B—Contracts and Payments**

#### **§ 1469.20 Application for contracts.**

(a) Applications must include:

(1) A completed self-assessment workbook.

(2) Benchmark condition inventory and conservation stewardship plan in accordance with § 1469.7 for the entire operation or, if Tier I, for the portion being enrolled.

(3) Any other requirements specified in the sign-up notice;

(4) For Tier I, clear indication of which acres the applicant wishes to enroll in the CSP;

(5) A certification that the applicant will agree to meet the relevant contract requirements outlined in the sign-up notice;

(b) Producers who are members of a joint operation, trust, estate, association, partnership or similar organization must file a single application for the joint operation or organization.

(c) Producers can submit only one application per sign-up.

(d) Producers can only have one active contract at any one time.

#### **§ 1469.21 Contract requirements.**

(a) To receive payments, each participant must enter into a conservation stewardship contract and comply with its provisions. Among other things, the participant agrees to maintain at least the level of stewardship identified in the benchmark inventory for the portion being enrolled for the entire contract period, as appropriate, and implement and maintain any new practices or activities required in the contract.

(b) Program participants will only receive payments from one conservation stewardship contract per agricultural operation.

(c) CSP participants must address the following requirements or additional resource concerns to the minimum level of treatment by the end of their CSP contract:

(1) Tier I contract requirement: additional practices and activities as included by the applicant in the conservation stewardship plan and approved by NRCS, over the part of the agricultural operation enrolled in CSP.

(2) Tier II contract requirement: additional practices and activities including the treatment of an additional locally significant resource concern as described in Section III of the NRCS FOTG other than the nationally significant resource concerns, as included by the applicant in the conservation stewardship plan and approved by NRCS, over the entire agricultural operation, where applicable.

(3) Tier III contract requirement: additional practices and activities as included by the applicant in the conservation stewardship plan and approved by NRCS, over the entire agricultural operation, where applicable.

(d) Transition to a higher tier of participation.

(1) Upon agreement by NRCS and the participant, a conservation stewardship contract may include provisions that lead to a higher tier of participation during the contract period. Such a transition does not require a contract modification if that transition is laid out in the schedule of contract activities. In the event that such a transition begins with Tier I, only the land area in the agricultural operation that meets the requirements for enrollment in Tier I can be enrolled in the contract until the transition occurs. Upon transition from Tier I to a higher tier of participation, the entire agricultural operation must be incorporated into the contract. All requirements applicable to the higher tier of participation would then apply. NRCS will calculate all stewardship, existing practice, new practice payments, and enhancement payments using the applicable enrolled acreage at the time of the payment.

(2) A contract in which a participant transitions to higher tier(s) of participation must include:

(i) A schedule for the activities associated with the transition(s);

(ii) A date certain by which time the transition(s) must occur; and,

(iii) A specification that the CSP payment will be based on the current Tier of participation, which may change over the life of the contract.

(3) A contract in which a participant transitions from Tier I to a higher tier

will not authorize higher payments for that transition until the participant has demonstrated that they have achieved that tier level for a period of at least 12 months.

(4) A contract in which a participant transitions from Tier II to Tier III must include a participation period of no less than 12 months at Tier II.

(5) The transition contract will retain the original contract length.

(e) A conservation stewardship contract must:

(1) Incorporate by reference the conservation stewardship plan;

(2) Be for 5 years for Tier I, and 5 to 10 years for Tier II or Tier III;

(3) Incorporate all provisions as required by law or statute, including participant requirements to:

(i) Implement and maintain the practices as identified and scheduled in the conservation stewardship plan, including those needed to be eligible for the specified tier of participation and comply with any additional sign-up requirements;

(ii) Not conduct any practices on the farm or ranch that tend to defeat the purposes of the contract;

(iii) Refund any CSP payments received with interest and liquidated damages, and forfeit any future payments under CSP, if the participant fails to correct a violation of a term or contract within 30 days of written notice of such by the NRCS, or upon a second violation of a term or condition of the contract;

(iv) Supply records and information as required by CCC to determine compliance with the contract and requirements of CSP.

(4) Specify the participant's requirements for operation and maintenance of the applied conservation practices;

(5) Specify the schedule of payments under the life of the contract, including how those payments:

(i) Relate to the schedule for implementing additional conservation measures as described in the security plan;

(ii) Relate to the participant's actual implementation of additional conservation measures as described in the security plan; and,

(iii) May be adjusted by NRCS if the participant's management decisions change the appropriate set or schedule of conservation measures on the operation.

(6) Incorporate any other provisions determined necessary or appropriate by NRCS, or included as a requirement for the sign-up.

(f) The participant must apply and maintain the practice(s) within the timelines specified in the contract.

(g) Contracts expire on September 30 in the last year of the contract. A participant may apply for a new conservation stewardship contract in a subsequent sign-up.

(h) Participants must:

(1) Implement the conservation stewardship contract approved by NRCS;

(2) Make available to NRCS, appropriate records showing the timely implementation of the contract;

(3) Comply with the regulations of this part; and

(4) Not engage in any activity that interferes with the purposes of the program, as determined by NRCS.

(i) NRCS will determine the payments under the contract as described in § 1469.23.

(j) NRCS will not pay participants for: practices within their conservation stewardship plan that are required to meet conservation compliance requirements found in 7 CFR part 12; practices that are included in maintenance agreements (with financial reimbursements for maintenance) that existed prior to the participant's conservation stewardship contract approval; or the maintenance of equipment.

(k) For contracts encompassing the participant's entire agricultural operation, the geographic boundaries of the acreage enrolled in the contract must include all fields and facilities under the participant's direct control, as determined by NRCS.

(l) An applicant will be awarded only one contract per sign-up period.

#### **§ 1469.22 Conservation practice operation and maintenance.**

(a) The contract will incorporate the operation and maintenance of the conservation practice(s) applied under the contract.

(b) The participant must operate and maintain any new conservation practice(s) for which the participant has received a new practice or enhancement payment its intended purpose for the life span of the conservation practice(s), as identified in the contract or conservation stewardship plan, as determined by NRCS.

(c) Conservation practices that are installed before the execution of a contract, but are needed in the contract to obtain the intended environmental benefits, must be operated and maintained as specified in the contract whether or not an existing practice payment is made.

(d) NRCS may periodically inspect the conservation practices during the practice lifespan as specified in the contract to ensure that operation and

maintenance are being carried out, and that the practice is fulfilling its intended objectives. When NRCS finds that a participant is not operating and maintaining practices installed through the CSP in an appropriate manner, NRCS will request a refund of any associated payments that NRCS made for that practice under the contract. If an existing practice is part of a system that meets the quality criteria, but does not technically meet NRCS minimum practice standards, the practice must be modified or updated to meet the standard according the FOTG as specified in § 1469.25(a) of this part.

#### **§ 1469.23 Program payments.**

(a) Stewardship component of CSP payments.

(1) The conservation stewardship plan, as applicable, divides the land area to be enrolled in the CSP into land use categories, such as irrigated and non-irrigated cropland, irrigated and non-irrigated pasture, pastured cropland and range land, among other categories.

(2) NRCS will determine an appropriate stewardship payment rate for each land use category using the following methodology:

(i) NRCS will initially calculate the average 2001 rates using the Agriculture Foreign Investment Disclosure Act (AFIDA) Land Value Survey, the National Agriculture Statistics Service (NASS) land rental data, and Conservation Reserve Program (CRP) rental rates.

(ii) Where typical rental rates for a given land use vary widely within a State or between adjacent States, NRCS will adjust the county-level rates to ensure local and regional consistency and equity.

(iii) The State Conservationists can also contribute additional local data, with advice from the State Technical Committee.

(iv) The final stewardship payment rate will be the adjusted regional rates described in paragraphs (a)(2)(i) through (iii) of this section multiplied by a reduction factor of 0.25 for Tier I, 0.50 for Tier II, and 0.75 for Tier III.

(v) Pastured cropland will receive the same stewardship payment as cropland.

(3) NRCS will compute the stewardship component of a participant's CSP payment as the product of: the number of acres in each land use category (not including "other" or land not in the applicant's control); the corresponding stewardship payment rate for the applicable acreage; and a tier-specific percentage. The tier-specific percentage is 5 percent for Tier I payments, 10 percent for Tier II

payments, and 15 percent for Tier III payments.

(4) Other incidental parcels as defined in § 1469.5(d)(1)(iv) including incidental forest land may be given a stewardship rate as though they were the land use to which they are contiguous if they are serving a conservation purpose, such as wildlife habitat. Minimum treatment requirements for the contract tier apply.

(5) Other land, as defined in § 1469.5(d)(1)(v), is not included in the stewardship payment computation.

(6) NRCS will publish the stewardship payment rates at the announcement of each program sign-up.

(b) Existing practice component of CSP payments.

(1) The Chief will determine and announce which practices will be eligible for existing practice payments in accordance with § 1469.8(a).

(2) With exceptions including, but not limited to, paragraph (b)(3) and (4) of this section, NRCS may pay the participant a percentage of the average 2001 county cost of maintaining a land management, and structural practice that is documented in the benchmark condition inventory as existing upon enrollment in CSP. The Chief may offer alternative payment methods such as paying a percentage of the stewardship payment as long as the payment will not exceed 75 percent (or, in the case of a beginning farmer or rancher, 90 percent) of the average 2001 county costs of installing the practice in the 2001 crop year. NRCS will post the rates for for payment at the time of the sign-up notices on the NRCS website and in USDA Service Centers.

(3) NRCS will not pay participants for maintenance of equipment.

(4) NRCS will not pay an existing practice component of CSP payments for any practice that is required to meet conservation compliance requirements found in 7 CFR Part 12.

(5) Existing practice payments are not intended to pay for routine maintenance activities related to production practices or practices considered typical in farm and ranch operations for a specific location.

(6) Existing practice payments will be made only on practices that meet or exceed the practice standards described in the FOTG.

(7) The Chief may reduce the rates in any given sign-up notice.

(c) New practice payments. (1) The Chief will determine and announce which practices will be eligible for new practice payments in accordance with § 1469.8(a).

(2) If a participant's CSP contract requires the participant to implement a

new structural, vegetative, or management practice, NRCS may pay the participant a percentage of the cost of installing the new practice. In no case will the payment exceed 50 percent of the average county costs of installing the practice (or a similar practice, if new) in the 2001 crop year. NRCS will provide the list of approved practices and the percentage cost-share rate for each practice at the time of each CSP sign-up notice.

(3) NRCS may not make new practice payments to participants for:

(i) Construction or maintenance of animal waste storage or treatment facilities or associated waste transport or transfer devices for animal feeding operations;

(ii) The purchase or maintenance of equipment; or

(iii) A non-land based structure that is not integral to a land based practice, as determined by the Chief.

(4) Participants may contribute to their share of the cost of installing a new practice through in-kind sources, such as personal labor, use of personal equipment, or donated materials. Contributions for a participant's share of the practice may also be provided from non-Federal sources, as determined by the Chief.

(5) Cost-share payments may be provided by other USDA programs; except that payments may not be provided through CSP and another program for the same practice on the same land area.

(6) If additional practices are installed or implemented to advance a participant from one tier of participation to a higher tier, the practice must be certified by NRCS and be maintained prior to advancing to a higher tier as described in § 1469.24(b).

(7) In no instance will the total financial contributions for installing a practice from all public and private entity sources exceed 100 percent of the actual cost of installing the practice.

(8) NRCS will not pay a new practice payment for any practice that is required to meet a participant's conservation compliance plan requirements found in 7 CFR part 12.

(9) The Chief may reduce the rates in any given sign-up notice.

(d) Enhancement component of CSP payments. (1) The Chief will establish a list of conservation practices and activities that are eligible for enhancement payments for a given sign-up. State Conservationists, with advice from the State Technical Committees, will tailor the list to meet the needs of the selected watersheds and submit to the Chief for concurrence.

(2) NRCS may pay an enhancement component of a CSP payment if a conservation stewardship plan demonstrates to the satisfaction of NRCS that the plan's activities will increase conservation performance including activities related to energy management as a result of additional effort by the participant and result in:

(i) The improvement of a resource concern by implementing or maintaining multiple conservation practices or measures that exceed the minimum eligibility requirements for the participant's Tier of participation as outlined in the sign-up notice and as described in § 1469.5(e) and the contract requirements in § 1469.21; or

(ii) An improvement in a local resource concern based on local priorities and in addition to the national significant resource concerns, as determined by NRCS.

(3) NRCS may also pay an enhancement component of a CSP payment if a participant:

(i) Participates in an on-farm conservation research, demonstration, or pilot project as outlined in the sign-up notice; or

(ii) Cooperates with other producers to implement watershed or regional resource conservation plans that involve at least 75 percent of the producers in the targeted area; or

(iii) Carries out assessment and evaluation activities relating to practices included in the conservation stewardship plan as outlined in the sign-up notice.

(4) NRCS will not pay the enhancement component of a CSP payment for any practice that is required to meet a participant's conservation compliance plan requirements found in 7 CFR part 12.

(5) Eligible enhancement payments.

(i) State Conservationists, with advice from the State Technical Committees, will develop proposed enhancement payment amounts for each practice and activity.

(ii) Enhancement payments will be determined based on a given activity's cost or expected net conservation benefits above the minimum criteria, and the payment amount will be an amount and at a rate necessary to encourage a participant to perform or continue a management practice or measure, resource assessment and evaluation project, or field-test a research, demonstration, or pilot project, that would not otherwise be initiated without government assistance.

(iii) NRCS will provide the list of approved enhancement activities and payment amounts for each activity with the CSP sign-up notice.

(6) The Chief may set a not-to-exceed limit for the enhancement payment in any given sign-up notice.

(7) Enhancements above the minimum criteria for the resource concern that are included in the benchmark inventory may be included in the first CSP payment.

(e) Contracts will be limited as follows:

(1) \$20,000 per year for a Tier I conservation stewardship contract, (2) \$35,000 per year for a Tier II conservation stewardship contract, or

(3) \$45,000 per year for a Tier III conservation stewardship contract.

(4) Stewardship components of CSP payments cannot exceed \$5,000 per year for Tier I, \$10,500 per year for Tier II, or \$13,500 per year for Tier III.

(5) The total of the stewardship, existing and enhancement payment cannot exceed a percentage of the unadjusted stewardship payment rate described in (a)(2)(i) through (iii). The tier-specific percentage is 15 percent for Tier I contracts, 25 percent for Tier II contracts, and 40 percent for Tier III contracts.

(f) The new practice and enhancement components of the CSP contract payment may increase once the participant applies and maintains additional conservation practices and activities as described in the conservation stewardship plan

(g) The Chief of NRCS may limit the stewardship, practice, and enhancement components of CSP payments in order to focus funding toward targeted activities and conservation benefits the Chief identifies in the sign-up notice and any subsequent addenda.

(h) In the event that annual funding is insufficient to fund existing contract commitments, the existing contracts will be pro-rated in that contract year.

#### **§ 1469.24 Contract modifications and transfers of land.**

(a) Contracts may be modified:

(1) At the request of the participant, if the modification is consistent with the purposes of the conservation security program, or;

(2) As required by the State Conservationist due to changes to the type size, management, or other aspect of the agricultural operation that would interfere with achieving the purposes of the program. In lieu of modifying the contract—

(i) The producer may terminate the contract; and,

(ii) Retain payments received under the contract, if the participant has fully complied with the terms and conditions of the contract before the termination.

(b) Participants may request a modification to their contract to change

their tier of participation under a CSP contract once the measures determined necessary by NRCS to meet the next tier level have been established and maintained for a period of 12 months.

(c) Contract transfers are permitted when there is agreement among all parties to the contract.

(1) NRCS must be notified within 60 days of the transfer of interest or the contract will be terminated.

(2) The transferee must be determined by NRCS to be eligible and must assume full responsibility under the contract, including operation and maintenance of those conservation practices and activities already undertaken and to be undertaken as a condition of the contract.

(d) The Chief may require a participant to refund all or a portion of any assistance earned under CSP if the participant sells or loses control of the land under a CSP contract, and the new owner or controller is not eligible to participate in CSP, or refuses to assume responsibility under the contract within 60 days after the date of the transfer or change in the interest of the land and the participant has not fully complied with the terms and conditions of the contract to the extent that the purposes of the program have not been achieved.

#### **§ 1469.25 Contract violations and termination.**

(a) If the NRCS determines that a participant is in violation of the terms of a contract, or documents incorporated by reference into the contract, NRCS will give the participant a reasonable time, as determined by the State Conservationist, to correct the violation and comply with the terms of the contract and attachments thereto. If a participant continues in violation, the State Conservationist may terminate the CSP contract.

(b) Notwithstanding the provisions of paragraph (a) of this section, a contract termination is effective immediately upon a determination by the State Conservationist that the participant has: Submitted false information; filed a false claim; engaged in any act for which a finding of ineligibility for payments is permitted under this part; or taken actions NRCS deems to be sufficiently purposeful or negligent to warrant a termination without delay.

(c) If NRCS terminates a contract due to breach of contract, the participant will forfeit all rights for future payments under the contract, and must refund all or part of the payments received, plus interest, and liquidated damages as determined in accordance with part 1403 of this chapter. The State Conservationist may require only partial

refund of the payments received if a previously installed conservation practice can function independently, is not affected by the violation or other conservation practices that would have been installed under the contract, and the participant agrees to operate and maintain the installed conservation practice for the life span of the practice.

(d) If NRCS terminates a contract due to breach of contract, or the participant voluntarily terminates the contract before any contractual payments have been made, the participant will forfeit all rights for further payments under the contract, and must pay such liquidated damages as are prescribed in the contract. The State Conservationist has the option to waive the liquidated damages, depending upon the circumstances of the case.

(e) When making any contract termination decisions, the State Conservationist may reduce the amount of money owed by the participant by a proportion which reflects the good faith effort of the participant to comply with the contract, or the hardships beyond the participant's control that have prevented compliance with the contract including natural disasters or events.

(f) The participant may voluntarily terminate a contract, without penalty or repayment, if the State Conservationist determines that the producer has fully complied with the terms and conditions of the contract before termination of the contract.

(g) In carrying out the role in this section, the State Conservationist may consult with the local conservation district.

### **Subpart C—General Administration**

#### **§ 1469.30 Fair treatment of tenants and sharecroppers.**

Payments received under this part must be divided in the manner specified in the applicable contract or agreement, and NRCS will ensure that producers who would have an interest in acreage being offered receive treatment which NRCS deems to be equitable, as determined by the Chief. NRCS may refuse to enter into a contract when there is a disagreement among joint applicants seeking enrollment as to an applicant's eligibility to participate in the contract as a tenant.

#### **§ 1469.31 Appeals.**

(a) An applicant or a participant may obtain administrative review of an adverse decision under CSP in accordance with parts 11 and 614, Subparts A and C, of this title, except as provided in paragraph (b) of this section.

(b) Participants cannot appeal the following decisions:

(1) Payment rates, payment limits, and cost-share percentages;

(2) Eligible conservation practices; and,

(3) Other matters of general applicability.

(c) Before a participant can seek judicial review of any action taken under this part, the participant must exhaust all administrative appeal procedures set forth in paragraph (a) of this section, and for purposes of judicial review, no decision will be a final agency action except a decision of the Chief under these procedures.

**§ 1469.32 Compliance with regulatory measures.**

Participants who carry out conservation practices are responsible for obtaining the authorities, permits, easements, or other approvals necessary for the implementation, operation, and maintenance of the conservation practices in keeping with applicable laws and regulations. Participants must comply with all laws and are responsible for all effects or actions resulting from the participant's performance under the contract.

**§ 1469.33 Access to agricultural operation.**

Any authorized NRCS representative has the right to enter an agricultural operation for the purpose of ascertaining the accuracy of any representations made in a contract or in anticipation of entering a contract, as to the performance of the terms and conditions of the contract. Access includes the right to provide technical assistance,

inspect any work undertaken under the contract, and collect information necessary to evaluate the performance of conservation practices in the contract. The NRCS representative will make a reasonable effort to contact the producer prior to the exercise of this provision.

**§ 1469.34 Performance based on advice or action of representatives of NRCS.**

If a participant relied upon the advice or action of any authorized representative of CCC, and did not know or have reason to know that the action or advice was improper or erroneous, the State Conservationist may accept the advice or action as meeting the requirements of CSP. In addition, the State Conservationist may grant relief, to the extent it is deemed desirable by CCC, to provide a fair and equitable treatment because of the good faith reliance on the part of the participant.

**§ 1469.35 Offsets and assignments.**

(a) Except as provided in paragraph (b) of this section, NRCS will make any payment or portion thereof to any participant without regard to questions of title under State law and without regard to any claim or lien against the crop, or proceeds thereof, in favor of the owner or any other creditor except agencies of the U.S. Government. The regulations governing offsets and withholdings found at 7 CFR part 1403 are applicable to contract payments.

(b) Any producer entitled to any payment may assign any payments in accordance with regulations governing assignment of payment found at 7 CFR part 1404.

**§ 1469.36 Misrepresentation and scheme or device.**

(a) If the Department determines that a producer erroneously represented any fact affecting a CSP determination made in accordance with this part, are not entitled to contract payments and must refund to CCC all payments, plus interest determined in accordance with § 1469.25.

(b) A producer who is determined to have knowingly:

(1) Adopted any scheme or device that tends to defeat the purpose of CSP;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a CSP determination, must refund to NRCS all payments, plus interest determined in accordance with § 1469.25 received by such producer with respect to all contracts. In addition, NRCS will terminate the participant's interest in all CSP contracts.

(c) If the producer acquires land subsequent to enrollment in CSP, that land is not considered part of the agricultural operation; however, if the land was previously owned or controlled by them before the date of enrollment and after May 13, 2002, then NRCS will conduct an investigation into the activity to see if there was a scheme or device.

Signed in Washington, DC, on June 10, 2004.

**Bruce I. Knight,**

*Vice President, Commodity Credit Corporation, Chief, Natural Resources Conservation Service.*

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